



भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY
साप्ताहिक
WEEKLY

सं. 9] नई दिल्ली, फरवरी 22—फरवरी 28, 2015, शनिवार/फाल्गुन 3—फाल्गुन 9, 1936
No. 9] NEW DELHI, FEBRUARY 22—FEBRUARY 28, 2015, SATURDAY/PHALGUNA 3—PHALGUNA 9, 1936

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 17 फरवरी, 2015

का.आ. 372.—केन्द्रीय सरकार एतद्द्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, दिल्ली विशेष पुलिस स्थापना द्वारा जांच किए गए मामलों से उत्पन्न अभियोजन, अपील और पुनरीक्षण या अन्य मामलों का अभियोजन मद्रुरै स्थित मद्रास उच्च न्यायालय की मद्रुरै पीठ में उपस्थित होने के लिए श्री एस. जयकुमार को केन्द्रीय अन्वेषण ब्यूरो में विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[फा. सं. 225/25/2013—एवीडी-II]

सुशील कुमार, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC
GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 17th February, 2015

S.O. 372.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri S. Jayakumar, Advocate as Special Public Prosecutor of the Central Bureau of Investigation in the Madurai Bench of Madras High Court at Madurai for conducting the prosecution, appeals, revisions or other matters arising out of the cases investigated by the Delhi Special Police Establishment.

[F. No. 225/25/2013-AVD-III]

SUSHEEL KUMAR, Under Secy.

नई दिल्ली, 19 फरवरी, 2015

New Delhi, the 19th February, 2015

का.आ. 373.—केन्द्रीय सरकार एतद्द्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, दिल्ली विशेष पुलिस स्थापना (के.अ.ब्यूरो) द्वारा संपूर्ण पश्चिम बंगाल राज्य के स्थानीय क्षेत्रों में विधि द्वारा स्थापित ट्रायल न्यायालयों तथा पुनरीक्षण या अपीलीय न्यायालयों में उनसे उद्धृत अपीलों, पुनरीक्षणों तथा अन्य मामलों के संचालन के लिए सर्वश्री सुशील नेगी एवं विपिन कुमार, केन्द्रीय अन्वेषण ब्यूरो के अभियोजन अधिकारी को लोक अभियोजक के रूप में नियुक्त करती है।

[फा. सं. 225/44/2013-एवीडी-II]

सुशील कुमार, अवर सचिव

S.O. 373.—In exercise of the powers conferred by sub-section (2) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints S/Shri Sushil Negi and Vipin Kumar, Prosecuting Officer of Central Bureau of Investigation as Public Prosecutor for conducting cases in the local area comprising the whole State of West Bengal instituted by the Delhi Special Police Establishment (C.B.I.) in the trial courts and appeals, revisions or other matters arising out of these cases in revisional or appellate Courts, established by law.

[F. No. 225/44/2013.AVD.II]

SUSHEEL KUMAR, Under Secy.

वित्त मंत्रालय**(राजस्व विभाग)****(केन्द्रीय प्रत्यक्ष कर बोर्ड)**

नई दिल्ली, 16 फरवरी, 2015

प्रपत्र सं. 3 सीपी**का.आ. 374.—**

1 आवेदक का नाम, पता तथा पेन सं.	गोडरेज एग्रोवेट लि. पिरोजशा नगर, इस्टर्न एक्सप्रेस हाइवे, विकरोली (ईस्ट) मुम्बई- 400719 (एएए सीजी 0617 क्यू)
2 कृषि विस्तार परियोजना का नाम	गोडरेज एग्रोवेट-कृषि संबंधी निविष्टियां विस्तार परियोजना (जीए- एआईईपी)
3 कृषि विस्तार परियोजना का प्रयोजन	फसल और पशुधन उत्पादों में सतत् वृद्धि करने हेतु अभिनव उत्पादों एवं सेवाओं को उपलब्ध कराकर भारतीय किसानों की उत्पादकता में सुधार लाना। किसानों को नवीनतम समाधान प्रदान कराना और इन्हें अच्छी कृषि संबंधी पद्धतियों से अवगत कराना।
4 आवेदन की संदर्भ संख्या और तिथि	फा. सं. 203/29/2014-आ.क.नि-।।, दिनांक 14.01.2015 को प्राप्त हुआ।
5 कृषि विस्तार परियोजना को आरंभ करने की तिथि	पहले ही आरंभ की जा चुकी है। तथापि, अनुमोदन आयकर अधिनियम की धारा 35 गगग के तहत औपचारिक अधिसूचना जारी होने की तारीख से ही प्रभावी होगा।
6 कृषि विस्तार परियोजना की माह के हिसाब से अवधि	चल रही परियोजना।
7 कर-निर्धारण वर्ष (वर्षों) जिनके लिए कृषि विस्तार परियोजना को अधिसूचित किया जा रहा है (तीन वर्षों से अधिक नहीं)	अधिसूचना के औपचारिक रूप से जारी होने की तारीख से कर-निर्धारण वर्ष 2016-17 तक।
8 कृषि विस्तार परियोजना पर होने वाले संभावित कुल खर्च (भूमि अथवा भवन की लागत राशि से भिन्न)	कर निर्धारण वर्ष 2014-15 और 2015-16 (आवेदक ने प्रत्येक वर्ष के लिए 10,82,00,000/- रूपए के खर्च का दावा किया है तथापि, क्योंकि परियोजना को अनुमोदन वित्त वर्ष 2014-15 में परवर्ती तिथि से दिया जा रहा है। अतः संगत अवधि हेतु संभावित व्यय काफी कम होगा, जहां तक वित्त वर्ष 2013-14 का संबंध है धारा 35 गगग के तहत किसी भी दावे के लिए अनुमति नहीं दी जाएगी) जबकि कर- निर्धारण वर्ष 2016-17 के लिए संभावित व्यय 10,82,00,000/- रूपये का अनुमान है।
9 कृषि विस्तार परियोजना के प्रत्येक लाभग्राही से प्राप्त की जाने वाली राशि, यदि कोई हो,	शून्य

10. वे शर्तें जिनके अधधीन (जीए- एआईपी) नाम से कृषि विस्तार परियोजना को अधिसूचित किया जा रहा है, निम्नानुसार है :-

- (i) कृषि विस्तार परियोजना को शुरू करने वाली अनुमोदित संस्था धारा 35 गगग की उपधारा (1) के अन्तर्गत अधिसूचित कृषि विस्तार परियोजना की लेखाबहियां पृथक रूप से रखेगी तथा ऐसी लेखाबहियों की धारा 288 की उपधारा (2) के नीचे उल्लिखित स्पष्टीकरण में यथा परिभाषित किए गए अनुसार किसी लेखाकार से लेखा-परीक्षा कराएगी।
- (ii) उपनियम (1) में उल्लिखित लेखा परीक्षा में लेखा-परीक्षक की कृषि विस्तार परियोजना के सम्बंध में अनुरक्षित लेखाबहियों के सही और उचित होने के संबंध में की गई टिप्पणियां, कृषि विस्तार परियोजना के क्रियाकलापों की वास्तविकता तथा अधिनियम के संगत उपबंधों में विनिर्दिष्ट शर्तों के पूर्ण किये जाने अथवा नियमों अथवा नियम 6 ककघ के उपनियम (6) या उपनियम (9) के अंतर्गत जारी अधिसूचना में उल्लिखित नियमों अथवा शर्तों को पूर्ण किए जाने के संबंध में टिप्पणियां शामिल होंगी।
- (iii) अनुमोदित संस्था प्रशिक्षण, शिक्षा, मार्गदर्शन अथवा ऐसे प्रशिक्षण, शिक्षा अथवा मार्गदर्शन हेतु वितरित की गई किसी सामग्री के लिए पात्र कृषि विस्तार परियोजना के अन्तर्गत किसी लाभग्राही से कोई राशि स्वीकार नहीं करेगी।
- (iv) अनुमोदित संस्था अधिनियम की धारा 35 गगग के उपबंधों, नियम 6 ककघ और इस नियम के अनुसार पात्र व्यय की कटौती के अलावा अधिसूचित कृषि विस्तार परियोजना से कोई प्रत्यक्ष या अप्रत्यक्ष लाभ नहीं उठाएगी।
- (v) परियोजना के अंतर्गत कम्पनी की प्रोफाइल और उत्पादों पर लघु सत्र को छोड़कर केवल उत्पाद-निष्प्रभावी प्रशिक्षण दिया जाएगा।
- (vi) लाभग्राही से प्राप्त की गई राशि, यदि कोई हो, को घटाने के बाद सभी खर्च (किसी भूमि या भवन की लागत स्वरूप का व्यय न होने पर) जिन्हें किसी पात्र कृषि विस्तार परियोजना को शुरू करने हेतु पूर्ण तथा अनन्य रूप से खर्च किया गया है, धारा 35 गगग के तहत कटौती के पात्र होंगे:
परन्तु यह कि कृषि विस्तार परियोजना पर खर्च किया गया कोई व्यय जिसकी कर निर्धारिती को किसी व्यक्ति द्वारा प्रत्यक्ष या अप्रत्यक्ष रूप से प्रतिपूर्ति की गई है या की जानी है, के लिए धारा 35 गगग के अंतर्गत कोई कटौती नहीं दी जाएगी।
- (vii) जहां अधिनियम की धारा 35 गग के अन्तर्गत किसी कटौती का किसी कर-निर्धारण वर्ष हेतु दावा किया जाता है तथा उसे अनुमत किया जाता है तो ऐसे व्यय के संबंध में अधिनियम के किसी अन्य उपबंध के अन्तर्गत उसी कर-निर्धारण वर्ष अथवा अन्य किसी कर निर्धारण वर्ष में कटौती अनुमत नहीं की जाएगी।
- (viii) इस परियोजना के अंतर्गत विस्तार कार्यकर्ताओं का डेटाबेस तत्संबंधी राज्य की संबंधित जिला कृषि समिति (डीएसी) को दिया जाएगा। इसके अलावा, आवेदक कृषि विस्तार सेवाओं को 'डीआईएसआई' ('इनपुट डिलरों हेतु कृषि विस्तार सेवाओं में डिप्लोमा') के अन्तर्गत इनपुट डिलरों के माध्यम से कृषि विस्तार सेवाएं उपलब्ध करा सकता है क्योंकि डीआईएसआई जो कि राष्ट्रीय कृषि विस्तार प्रबंधन संस्थान, हैदराबाद ('एमएएनएजीई') द्वारा चलाया जा रहा है, की 12 वीं योजना में इस संबंध में विशिष्ट निर्धारण किया गया है।
- (ix) अनुमोदित संस्था द्वारा धारा 139 की उपधारा (1) के अन्तर्गत आय विवरणी को प्रस्तुत करने की नियत तिथि को या उससे पूर्व निम्नलिखित सूचना भी प्रस्तुत करेगी, नामतः-
(क) लेखा परीक्षा रिपोर्ट के साथ पूर्व वर्ष के लिए कृषि विस्तार परियोजना के लेखाओं के लेखापरीक्षित किए गए विवरण तथा धारा 35 गगग की उप धारा (1) के अन्तर्गत दावा की गई कटौती की राशि;
(ख) पूर्व वर्ष के दौरान इसके द्वारा शुरू की गई कृषि विस्तार परियोजना पर तथा चालू वर्ष के दौरान शुरू की जाने वाली कृषि विस्तार परियोजना के कार्यक्रम के संबंध में एक टिप्पणी और ऐसे कार्यक्रम हेतु वित्तीय आबंटन; तथा
(ग) कर निर्धारिती द्वारा पूर्व वर्ष के दौरान शुरू की गई कृषि विस्तार परियोजना की वास्तविकता के संबंध में कृषि मंत्रालय, भारत सरकार की ओर से प्रमाणपत्र।
(x) इस परियोजना के अंतर्गत कम्पनी की प्रोफाइल और उत्पादों पर अल्प सत्र को छोड़कर केवल उत्पाद निष्प्रभावी प्रशिक्षण दिया जाएगा।

11. केन्द्रीय प्रत्यक्ष कर बोर्ड अपना अनुमोदन वापस ले लेगा यदि अनुमोदित संस्था:-

- (क) अपने क्रियाकलाप बंद कर देती हैं; अथवा
- (ख) इसके क्रियाकलाप अवास्तविक पाए जाते हैं; अथवा
- (ग) इसके क्रियाकलाप अधिनियम के सभी या किसी संगत उपबंधों अथवा नियमों के अनुसार नहीं किए जा रहे हैं; अथवा
- (घ) इसके क्रियाकलाप ऐसी सभी शर्तों अथवा उनमें से किसी भी शर्त के अनुसार नहीं किए जा रहे हैं जिन शर्तों के अधधीन अधिसूचना जारी की जा रही है।

स्थान : नई दिल्ली, दिनांक 16.2.2015

[अधिसूचना सं. 16/2015/फा.सं. 203/29/2014-आकनि II]

ऋचा रस्तोगी, अवर सचिव

MINISTRY OF FINANCE**(Department of Revenue)****(CENTRAL BOARD OF DIRECT TAXES)**

New Delhi, the 16th February, 2015

FORM NO. 3CP**S.O. 374.—**

1.	Name, address and PAN of the applicant	Godrej Agrovet Limited, Pirojshanagar, Eastern Express Highway, Vikroli (East), Mumbai-400079 (AAACG0617Q)
2.	Title of the agricultural extension project	Godrej Agrovet- Agricultural Inputs Extension Project ('GA-AIEP')
3.	Purpose of the agricultural extension project	To improve the productivity of Indian farmers by providing innovative products and services that sustainably increase crop and livestock yields. To provide latest solutions to the farmers and educate them on good agricultural practices.
4.	Reference No. and date of the application	F.No. 203/29/2014-ITA.II received on 14.01.2015
5.	Date of commencement of the agricultural extension project	Already commenced. However, approval shall be effective from the date of issue of this formal Notification u/s 35CCC of the I.T. Act.
6.	Duration of the agricultural extension project in months	Ongoing project.
7.	Assessment year(s) for which the agricultural extension project is being notified (not exceeding three years)	From date of formal issue of Notification till A.Y. 2016-17.
8.	Total expenses likely to be incurred for the agricultural extension project (other than cost of land or building)	For A.Yr's 2014-2015 and 2015-16 (applicant has claimed expenses of Rs. 10,82,00,000/- for each year. However, as project is being accorded approval from subsequent date in the F.Yr. 2014-2015, the expected expenditure for the relevant period would be much lesser, as far as F.Yr. 2013 2014 is concerned, no claim u/s 35CCC shall be allowed) while for A.Y. 2016-17, likely expenditure is Rs. 10,82,00,000/-.
9.	Amount, if any, to be charged from each beneficiary of agricultural extension project.	NIL
10.	Conditions subject to which agricultural extension project titled ('GA-AIEP') is being notified are as under:	
	i.	The approved entity undertaking agricultural extension project shall maintain separate books of account of the agricultural extension project notified under sub-section (1) of section 35CCC, and get such books of account audited by an accountant as defined in the Explanation below sub-section (2) of section 288.
	ii.	The audit report referred to in sub-rule (1) shall include the comments of the auditor on the true and fair view of the books of account maintained for agricultural extension project, the genuineness of the activities of the agricultural extension project and fulfillment of the conditions specified in the relevant provisions of the Act or the rules or the conditions mentioned in the notification issued under sub-rule (6) or sub-rule (9) of rule 6AAD.

- iii. The approved entity shall not accept any amount from the beneficiary under the eligible agricultural extension project for training, education, guidance or any material distributed for the purposes of such training, education or guidance.
- iv. The approved entity shall not get any direct or indirect benefit from the notified agricultural extension project except the deduction of the eligible expenditure in accordance with the provisions of section 35CCC of the Act, rule 6AAD and this rule.
- v. Under the project only product neutral training would be given except a short session on company's profile and products.
- vi. All expenses (not being expenditure in the nature of cost of any land or building), as reduced by the amount received from beneficiary, if any, incurred wholly and exclusively for undertaking an eligible agricultural extension project shall be eligible for deduction under section 35CCC:

Provided that any expenditure incurred on the agricultural extension project which is reimbursed or reimbursable to the assessee by any person, whether directly or indirectly, shall not be eligible for deduction under section 35CCC.

- vii. Where a deduction under this section 35CC of the Act is claimed and allowed for any assessment year, deduction shall not be allowed in respect of such expenditure under any other provisions of the Act for the same or any other assessment year.
- viii. Database of extension workers under this project would be given to the District Agricultural Committee (DAC) concerned in the respective State. In addition, applicant may provide the agricultural extension services through input dealers under DAESI ('Diploma in Agricultural Extension Services for Input Dealers') being run by the National Institute of Agricultural Extension Management, Hyderabad ('MANAGE') as the 12th Plan scheme for DAESI has a specific stipulation in this regard.
- ix. The approved entity shall, on or before the due date of furnishing the return of income under sub-section (1) of section 139, furnish the following to the Commissioner of Income-tax or the Director of Income-tax, as the case may be, namely:-
 - a) the audited statement of accounts of the agricultural extension projects for the previous year along with the audit report and amount of deduction claimed under sub-section (1) of section 35CCC;
 - b) a note on the agricultural extension project undertaken by it during the previous year and the programme of agricultural extension project to be undertaken during the current year and the financial allocation for such programme; and
 - c) a certificate from the Ministry of Agriculture, Government of India, regarding the genuineness of the agricultural extension project undertaken by the assessee during the previous year.
- x. Under the project only product neutral training will be given except a short session on company's profile and products.

11. The Central Board of Direct Taxes shall withdraw the approval if the approved entity:-

- a. has ceased its activities; or
- b. its activities are not genuine; or
- c. its activities are not being carried out in accordance with all or any of the relevant provisions of the Act or Rules; or
- d. its activities are not being carried out in accordance with all or any of the conditions subject to which the notification is being issued.

Place: New-Delhi

Dated: 16/02/2015

[Notification No. 16/2015/F.No. 203/29/2014-ITA.II]

RICHA RASTOGI, Under Secy.

नई दिल्ली, 16 फरवरी, 2015

प्रपत्र सं. 3 सीपी**का.आ. 375.—**

- | | | |
|---|--|---|
| 1 | आवेदक का नाम, पता तथा पेन सं. | गोडरेज एग्रोवेट लि. पिरोजशा नगर, इस्टर्न एक्सप्रेस हाइवे, विकरोली (ईस्ट) मुम्बई- 400079 (एए सीजी 0617 क्यू) |
| 2 | कृषि विस्तार परियोजना का नाम | पशुचारा विस्तार परियोजना (एनिमल फीड एक्सटेंशन प्रोजेक्ट) |
| 3 | कृषि विस्तार परियोजना का प्रयोजन | पशु तथा कुक्कुट स्वास्थ्य प्रबंधन तथा पशु चिकित्सा विशेषज्ञों के संबंध में किसानों के बीच सूचना बांटना। |
| 4 | आवेदन की संदर्भ संख्या और तिथि | फा.सं. 203/30/2014 आ.क.नि- , दिनांक 14.01.2015 को प्राप्त हुआ। |
| 5 | कृषि विस्तार परियोजना को आरंभ करने की तिथि | पहले ही आरंभ की जा चुकी है। तथापि, अनुमोदन आयकर अधिनियम की धारा 35 गगग के तहत इस औपचारिक अधिसूचना जारी होने की तारीख से ही प्रभावी होगा। |
| 6 | कृषि विस्तार परियोजना की माह के हिसाब से अवधि | चल रही परियोजना |
| 7 | कर-निर्धारण वर्ष (वर्षों) जिनके लिए कृषि विस्तार परियोजना को अधिसूचित किया जा रहा है (तीन वर्षों से अधिक नहीं) | अधिसूचना के औपचारिक रूप से जारी होने की तारीख से कर-निर्धारण वर्ष 2016-17 तक |
| 8 | कृषि विस्तार परियोजना पर होने वाले संभावित कुल खर्च (भूमि अथवा भवन की लागत राशि से भिन्न) | कर निर्धारण वर्ष 2014-15 और 2015-16 (आवेदक ने प्रत्येक वर्ष के लिए 2,07,00,000/- रूपए के खर्च का दावा किया है। तथापि, क्योंकि परियोजना को अनुमोदन वित्त वर्ष 2014-15 में परवर्ती तिथि से दिया जा रहा है, अतः संगत अवधि हेतु संभावित व्यय काफी कम होगा, जहां तक वित्त वर्ष 2013-14 का संबंध है धारा 35 गगग के तहत किसी भी दावे के लिए अनुमति नहीं दी जाएगी) जबकि कर-निर्धारण वर्ष 2016-17 के लिए संभावित व्यय 10,82,00,000/- रुपये का अनुमान है। |
| 9 | कृषि विस्तार परियोजना के प्रत्येक लाभग्राही से प्राप्त की जाने वाली राशि, यदि कोई हो, | शून्य |
10. वे शर्तें जिनके अधधीन 'पशुचारा विस्तार परियोजना' नाम से कृषि विस्तार परियोजना को अधिसूचित किया जा रहा है, निम्नानुसार हैं:-
- (i) कृषि विस्तार परियोजना को शुरू करने वाली अनुमोदित संस्था धारा 35 गगग की उपधारा (1) के अन्तर्गत अधिसूचित कृषि विस्तार परियोजना की लेखाबहियां पृथक रूप से रखेगी तथा ऐसी लेखाबहियों की धारा 288 की उपधारा (2) के नीचे उल्लिखित स्पष्टीकरण में यथा परिभाषित किए गए अनुसार किसी लेखाकार से लेखा-परीक्षा कराएगी।
 - (ii) उपनियम (1) में उल्लिखित लेखा परीक्षा में लेखा-परीक्षक की कृषि विस्तार परियोजना के सम्बंध में अनुरक्षित लेखाबहियों के सही और उचित होने के संबंध में की गई टिप्पणियां, कृषि विस्तार परियोजना के क्रियाकलापों की वास्तविकता तथा अधिनियम के संगत उपबंधों में विनिर्दिष्ट शर्तों के पूर्ण किये जाने अथवा नियमों अथवा नियम 6 ककघ के उपनियम (6) या उपनियम (9) के अंतर्गत जारी अधिसूचना में उल्लिखित नियमों अथवा शर्तों को पूर्ण किए जाने के संबंध में टिप्पणियां शामिल होंगी।
 - (iii) अनुमोदित संस्था प्रशिक्षण, शिक्षा, मार्गदर्शन अथवा ऐसे प्रशिक्षण, शिक्षा अथवा मार्गदर्शन हेतु वितरित की गई किसी सामग्री के लिए पात्र कृषि विस्तार परियोजना के अन्तर्गत किसी लाभग्राही से कोई राशि स्वीकार नहीं करेगी।
 - (iv) अनुमोदित संस्था अधिनियम की धारा 35 गगग के उपबंधों, नियम 6 ककघ और इस नियम के अनुसार पात्र व्यय की कटौती के अलावा अधिसूचित कृषि विस्तार परियोजना से कोई प्रत्यक्ष या अप्रत्यक्ष लाभ नहीं उठाएगी।
 - (v) लाभग्राही से प्राप्त की गई राशि, यदि कोई हो, को घटाने के बाद सभी खर्च (किसी भूमि या भवन की लागत स्वरूप का व्यय न होने पर) जिन्हें किसी पात्र कृषि विस्तार परियोजना को शुरू करने हेतु पूर्ण तथा अनन्य रूप से खर्च किया गया है, धारा 35 गगग के तहत कटौती के पात्र होंगे; परन्तु यह कि कृषि विस्तार परियोजना पर खर्च किया गया कोई व्यय जिसकी कर निर्धारिती को किसी व्यक्ति द्वारा प्रत्यक्ष या अप्रत्यक्ष रूप से प्रतिपूर्ति की गई है या की जानी है, के लिए धारा 35 गगग के अंतर्गत कोई कटौती नहीं दी जाएगी।

- (vi) जहां अधिनियम की धारा 35 गग के अन्तर्गत किसी कटौती का किसी कर-निर्धारण वर्ष हेतु दावा किया जाता है तथा उसे अनुमत किया जाता है तो ऐसे व्यय के संबंध में अधिनियम के किसी अन्य उपबंध के अन्तर्गत उसी कर-निर्धारण वर्ष अथवा अन्य किसी कर -निर्धारण वर्ष में कटौती अनुमत नहीं की जाएगी।
- (vii) अनुमोदित संस्था द्वारा धारा 139 की उपधारा (1) के अन्तर्गत आय विवरणी को प्रस्तुत करने की नियत तिथि को या उससे पूर्व आयकर आयुक्त को या आयकर निदेशक को, जैसा भी मामला हो, निम्नलिखित सूचना भी प्रस्तुत करेगी, नामतः—
- (क) लेखा परीक्षा रिपोर्ट के साथ पूर्व वर्ष के लिए कृषि विस्तार परियोजना के लेखाओं के लेखापरीक्षित किए गए विवरण तथा धारा 35 गग की उपधारा (1) के अन्तर्गत दावा की गई कटौती की राशि;
- (ख) पूर्व वर्ष के दौरान इसके द्वारा शुरू की गई कृषि विस्तार परियोजना पर तथा चालू वर्ष के दौरान शुरू की जाने वाली कृषि विस्तार परियोजना के कार्यक्रम के संबंध में एक टिप्पणी और ऐसे कार्यक्रम हेतु वित्तीय आबंटन; तथा
- (ग) कर-निर्धारित द्वारा पूर्व वर्ष के दौरान शुरू की गई कृषि विस्तार परियोजना की वास्तविकता के संबंध में कृषि मंत्रालय, भारत सरकार की ओर से प्रमाणपत्र।
- (viii) इस परियोजना के अंतर्गत कम्पनी की प्रोफाइल और उत्पादों पर अल्प सत्र को छोड़कर केवल उत्पाद निम्नभावी प्रशिक्षण दिया जाएगा।
11. केन्द्रीय प्रत्यक्ष कर बोर्ड अपना अनुमोदन वापस ले लेगा यदि अनुमोदित संस्था—
- (क) अपने क्रियाकलाप बंद कर देती है; अथवा
- (ख) इसके क्रियाकलाप अवास्तविक पाए जाते हैं; अथवा
- (ग) इसके क्रियाकलाप अधिनियम के सभी या किसी संगत उपबंधों अथवा नियमों के अनुसार नहीं किए जा रहे हैं; अथवा
- (घ) इसके क्रियाकलाप ऐसी सभी शर्तों अथवा उनमें से किसी भी शर्त के अनुसार नहीं किए जा रहे हैं जिन शर्तों के अध्वधीन अधिसूचना जारी की जा रही है।

स्थान : नई दिल्ली, दिनांक 16.2.2015

[अधिसूचना सं. 15/2015/फा.सं. 203/30/2014-आकनि II]

ऋचा रस्तोगी, अवर सचिव

New Delhi, the 16th February, 2015

FORM NO. 3CP

S.O. 375.—

1. Name, address and PAN of the applicant	Godrej Agrovat Limited, Pirojshanagar, Eastern Express Highway, Vikroli (East), Mumbai-400079 (AAACG0617Q)
2. Title of the agricultural extension project	Animal Feed Extension Project
3. Purpose of the agricultural extension project	Sharing of information among farmers in relation to cattle and poultry health management and with veterinary experts.
4. Reference No. and date of the application	F.No. 203/30/2014-ITA.II received on 14.01.2015
5. Date of commencement of the agricultural extension project	Already commenced. However, approval shall be effective from the date of issue of this formal Notification u/s 35CCC of the I.T. Act.
6. Duration of the agricultural extension project in months	Ongoing project.
7. Assessment year(s) for which the agricultural extension project is being notified (not exceeding three years)	From date of formal issue of Notification till A.Y. 2016-17.

- | | | |
|----|---|--|
| 8. | Total expenses likely to be incurred for the agricultural extension project (other than cost of land or building) | For A.Yr's 2014-2015 and 2015-16 (applicant has claimed expenses of Rs. 2,07,00,000/- for each year. However, as project is being accorded approval from subsequent date in the F.Yr. 2014-2015, the expected expenditure for the relevant period would be much lesser, as far as F.Yr. 2013 2014 is concerned, no claim u/s 35CCC shall be allowed) while for A.Y. 2016-17, likely expenditure is Rs. 10,82,00,000/-. |
| 9. | Amount, if any, to be charged from each beneficiary of agricultural extension project. | NIL |

10. Conditions subject to which agricultural extension project titled 'Animal Feeds Extension Project' is being notified are as under:

- i. The approved entity undertaking agricultural extension project shall maintain separate books of account of the agricultural extension project notified under sub-section (1) of section 35CCC, and get such books of account audited by an accountant as defined in the Explanation below sub-section (2) of section 288.
- ii. The audit report referred to in sub-rule (1) shall include the comments of the auditor on the true and fair view of the books of account maintained for agricultural extension project, the genuineness of the activities of the agricultural extension project and fulfillment of the conditions specified in the relevant provisions of the Act or the rules or the conditions mentioned in the notification issued under sub-rule (6) or sub-rule (9) of rule 6AAD.
- iii. The approved entity shall not accept any amount from the beneficiary under the eligible agricultural extension project for training, education, guidance or any material distributed for the purposes of such training, education or guidance.
- iv. The approved entity shall not get any direct or indirect benefit from the notified agricultural extension project except the deduction of the eligible expenditure in accordance with the provisions of section 35CCC of the Act, rule 6AAD and this rule.
- v. All expenses (not being expenditure in the nature of cost of any land or building), as reduced by the amount received from beneficiary, if any, incurred wholly and exclusively for undertaking an eligible agricultural extension project shall be eligible for deduction under section 35CCC:

Provided that any expenditure incurred on the agricultural extension project which is reimbursed or reimbursable to the assessee by any person, whether directly or indirectly, shall not be eligible for deduction under section 35CCC.
- vi. Where a deduction under this section 35CC of the Act is claimed and allowed for any assessment year, deduction shall not be allowed in respect of such expenditure under any other provisions of the Act for the same or any other assessment year.
- vii. The approved entity shall, on or before the due date of furnishing the return of income under sub-section (1) of section 139, furnish the following to the Commissioner of Income-tax or the Director of Income-tax, as the case may be, namely:-
 - a) the audited statement of accounts of the agricultural extension projects for the previous year along with the audit report and amount of deduction claimed under sub-section (1) of section 35CCC;
 - b) a note on the agricultural extension project undertaken by it during the previous year and the programme of agricultural extension project to be undertaken during the current year and the financial allocation for such programme; and
 - c) a certificate from the Ministry of Agriculture, Government of India, regarding the genuineness of the agricultural extension project undertaken by the assessee during the previous year.
- viii. Under the project only product neutral training will be given except a short session on company's profile and products.

11. The Central Board of Direct Taxes shall withdraw the approval if the approved entity:-

- has ceased its activities; or
- its activities are not genuine; or
- its activities are not being carried out in accordance with all or any of the relevant provisions of the Act or Rules; or
- its activities are not being carried out in accordance with all or any of the conditions subject to which the notification is being issued.

Place: New-Delhi

Dated:16/02/2015

[Notification No. 15/2015/F.No. 203/30/2014-ITA.II]

RICHA RASTOGI, Under Secy.

नई दिल्ली, 16 फरवरी, 2015

प्रपत्र सं. 3 सीपी**का.आ. 376.—**

1 आवेदक का नाम, पता तथा पेन सं.	गोडरेज एग्रीवेट लि. पिरोजशा नगर, इस्टर्न एक्सप्रेस हाइवे, विकरोली (पूर्वी) मुम्बई- 400079 (एएए सीजी 0617 क्यू)
2 कृषि विस्तार परियोजना का नाम	खजूर तेल विस्तार परियोजना
3 कृषि विस्तार परियोजना का प्रयोजन	खजूर तेल फसल की खेती में किसानों को प्रशिक्षित करना
4 आवेदन की संदर्भ संख्या और तिथि	फा.सं. 203/31/2014 आ.क.नि- , दिनांक 14.01.2015 को प्राप्त हुआ।
5 कृषि विस्तार परियोजना को आरंभ करने की तिथि	पहले ही आरंभ की जा चुकी है। तथापि, अनुमोदन आयकर अधिनियम की धारा 35 गगग के तहत इस औपचारिक अधिसूचना के जारी होने की तारीख से ही प्रभावी होगा।
6 कृषि विस्तार परियोजना की माह के हिसाब से अवधि	चल रही परियोजना
7 कर-निर्धारण वर्ष (वर्षों) जिनके लिए कृषि विस्तार परियोजना को अधिसूचित किया जा रहा है (तीन वर्षों से अधिक नहीं)	निर्धारण वर्ष 2016-17 तक अधिसूचना के विधिवत जारी होने की तारीख से
8 कृषि विस्तार परियोजना पर होनेवाले संभावित कुल खर्च (भूमि अथवा भवन की लागत राशि से भिन्न)	निर्धारण वर्ष 2014-15 और 2015-16 के लिए (आवेदक ने प्रत्येक वर्ष के लिए 8,53,00,000/- रु. के व्यय का दावा किया है। तथापि, क्योंकि परियोजना को अनुमोदन वित्त वर्ष 2014-15 में परवर्ती तिथि से दिया जा रहा है अतः संगत अवधि हेतु संभावित व्यय काफी कम होगा, जहां तक वित्त वर्ष 2013-14 का संबंध है, धारा 35 गगग के तहत किसी दावे के लिए अनुमति नहीं दी जाएगी) जबकि कर निर्धारण वर्ष 2016-17 के लिए संभावित व्यय 8,53,00,000/-रु. का अनुमान है।
9 कृषि विस्तार परियोजना के प्रत्येक लाभग्राही से प्राप्त की जाने वाली राशि, यदि कोई हो,	शून्य

10. वे शर्तें जिनके अध्वधीन पशुचारा 'विस्तार योजना' नाम से कृषि विस्तार परियोजना को अधिसूचित किया जा रहा है, निम्नानुसार हैं:-

- कृषि विस्तार परियोजना को शुरू करने वाली अनुमोदित संस्था धारा 35 गगग की उपधारा (1) के अन्तर्गत अधिसूचित कृषि विस्तार परियोजना की लेखाबहियां पृथक रूप से रखेगी तथा ऐसी लेखाबहियों की धारा 288 की उपधारा (2) के नीचे उल्लिखित स्पष्टीकरण में यथा परिभाषित किए गए अनुसार किसी लेखाकार से लेखा-परीक्षा कराएगी।
- उपनियम (1) में उल्लिखित लेखा परीक्षा में लेखा-परीक्षक की कृषि विस्तार परियोजना के सम्बंध में अनुरक्षित लेखाबहियों के सही और उचित होने के संबंध में की गई टिप्पणियां, कृषि विस्तार परियोजना के क्रियाकलापों की वास्तविकता तथा अधिनियम के संगत उपबंधों में विनिर्दिष्ट शर्तों के पूर्ण किये

जाने अथवा नियमों अथवा नियम 6 ककघ के उपनियम (6) या उपनियम (9) के अंतर्गत जारी अधिसूचना में उल्लिखित नियमों अथवा शर्तों को पूर्ण किए जाने के संबंध में टिप्पणियां शामिल होंगी।

- (iii) अनुमोदित संस्था प्रशिक्षण, शिक्षा, मार्गदर्शन अथवा ऐसे प्रशिक्षण, शिक्षा अथवा मार्गदर्शन हेतु वितरित की गई किसी सामग्री के लिए पात्र कृषि विस्तार परियोजना के अन्तर्गत किसी लाभग्राही से कोई राशि स्वीकार नहीं करेगी।
 - (iv) अनुमोदित संस्था अधिनियम की धारा 35 गगग के उपबंधों, नियम 6 ककघ और इस नियम के अनुसार पात्र व्यय की कटौती के अलावा अधिसूचित कृषि विस्तार परियोजना से कोई प्रत्यक्ष या अप्रत्यक्ष लाभ नहीं उठाएगी।
 - (v) आवेदक खजूर तेल किसानों जिनको परियोजना से लाभ हुआ है की डाटाशीट कृषि मंत्रालय को भेजेगा।
 - (vi) लाभग्राही से प्राप्त की गई राशि, यदि कोई हो, को घटाने के बाद सभी खर्च (किसी भूमि या भवन की लागत स्वरूप का व्यय न होने पर) जिन्हें किसी पात्र कृषि विस्तार परियोजना को शुरू करने हेतु पूर्ण तथा अनन्य रूप से खर्च किया गया है, धारा 35 गगग के तहत कटौती के पात्र होंगे; परन्तु यह कि कृषि विस्तार परियोजना पर खर्च किया गया कोई व्यय जिसकी कर निर्धारिती को किसी व्यक्ति द्वारा प्रत्यक्ष या अप्रत्यक्ष रूप से प्रतिपूर्ति की गई है या की जानी है, के लिए धारा 35 गगग के अंतर्गत कोई कटौती नहीं दी जाएगी।
 - (vii) जहां अधिनियम की धारा 35 गग के अन्तर्गत किसी कटौती का किसी कर-निर्धारण वर्ष हेतु दावा किया जाता है तथा उसे अनुमत किया जाता है तो ऐसे व्यय के संबंध में अधिनियम के किसी अन्य उपबंध के अन्तर्गत उसी कर-निर्धारण वर्ष अथवा अन्य किसी कर-निर्धारण वर्ष में कटौती अनुमत नहीं की जाएगी।
 - (viii) अनुमोदित संस्था द्वारा 139 की उपधारा (1) के अन्तर्गत आय विवरणी को प्रस्तुत करने की नियत तिथि को या उससे पूर्व आयकर आयुक्त को या आयकर निदेशक को, जैसा भी मामला हो, निम्नलिखित सूचना भी प्रस्तुत करेगी, नामतः—
 - (क) लेखा परीक्षा रिपोर्ट के साथ पूर्व वर्ष के लिए कृषि विस्तार परियोजना के लेखाओं के लेखापरीक्षित किए गए विवरण तथा धारा 35 गगग की उपधारा (1) के अन्तर्गत दावा की गई कटौती की राशि;
 - (ख) पूर्व वर्ष के दौरान इसके द्वारा शुरू की गई कृषि विस्तार परियोजना पर तथा चालू वर्ष के दौरान शुरू की जाने वाली कृषि विस्तार परियोजना के कार्यक्रम के संबंध में एक टिप्पणी और ऐसे कार्यक्रम हेतु वित्तीय आबंटन; तथा
 - (ग) कर-निर्धारिती द्वारा पूर्व वर्ष के दौरान शुरू की गई कृषि विस्तार परियोजना की वास्तविकता के संबंध में कृषि मंत्रालय, भारत सरकार की ओर से प्रमाणपत्र।
 - (ix) इस परियोजना के अंतर्गत कम्पनी की प्रोफाइल और उत्पादों पर अल्प सत्र को छोड़कर केवल उत्पाद निष्प्रभावी प्रशिक्षण दिया जाएगा।
11. केन्द्रीय प्रत्यक्ष कर बोर्ड अपना अनुमोदन वापस ले लेगा यदि अनुमोदित संस्था:—
- (क) अपने क्रियाकलाप बंद कर देती है; अथवा
 - (ख) इसके क्रियाकलाप अवास्तविक पाए जाते हैं; अथवा
 - (ग) इसके क्रियाकलाप अधिनियम के सभी या किसी संगत उपबंधों अथवा नियमों के अनुसार नहीं किए जा रहे हैं; अथवा
 - (घ) इसके क्रियाकलाप ऐसी सभी शर्तों अथवा उनमें से किसी भी शर्त के अनुसार नहीं किए जा रहे हैं जिन शर्तों के अध्याधीन अधिसूचना जारी की जा रही है।

स्थान : नई दिल्ली, दिनांक 16.2.2015

[अधिसूचना सं. 14/2015/फा.सं. 203/31/2014-आकनि II]

ऋचा रस्तोगी, अवर सचिव

New Delhi, the 16th February, 2015

FORM NO. 3CP

S.O. 376.—

1. Name, address and PAN of the applicant	Godrej Agrovet Limited, Pirojshanagar, Eastern Express Highway, Vikroli (East), Mumbai-400079 (AAACG0617Q)
2. Title of the agricultural extension project	Oil Palm Extension Project
3. Purpose of the agricultural extension project	Training farmers in cultivation of oil palm crop
4. Reference No. and date of the application	F.No. 203/31/2014-ITA.II received on 14.01.2015

- | | | |
|----|---|---|
| 5. | Date of commencement of the agricultural extension project | Already commenced. However, approval shall be effective from the date of issue of this formal Notification u/s 35CCC of the I.T. Act. |
| 6. | Duration of the agricultural extension project in months | Ongoing project. |
| 7. | Assessment year(s) for which the agricultural extension project is being notified (not exceeding three years) | From date of formal issue of Notification till A.Y. 2016-17. |
| 8. | Total expenses likely to be incurred for the agricultural extension project (other than cost of land or building) | For A.Yr's 2014-2015 and 2015-16 (applicant has claimed expenses of Rs. 8,53,00,000/- for each year. However, as project is being accorded approval from subsequent date in the F.Yr. 2014-2015, the expected expenditure for the relevant period would be much lesser, as far as F.Yr. 2013-2014 is concerned, no claim u/s 35CCC shall be allowed) while for A.Y. 2016-17, likely expenditure is Rs. 8,53,00,000/-. |
| 9. | Amount, if any, to be charged from each beneficiary of agricultural extension project. | NIL |
10. Conditions subject to which agricultural extension project titled 'Animal Feeds Extension Project' is being notified are as under:
- i. The approved entity undertaking agricultural extension project shall maintain separate books of account of the agricultural extension project notified under sub-section (1) of section 35CCC, and get such books of account audited by an accountant as defined in the Explanation below sub-section (2) of section 288.
 - ii. The audit report referred to in sub-rule (1) shall include the comments of the auditor on the true and fair view of the books of account maintained for agricultural extension project, the genuineness of the activities of the agricultural extension project and fulfillment of the conditions specified in the relevant provisions of the Act or the rules or the conditions mentioned in the notification issued under sub-rule (6) or sub-rule (9) of rule 6AAD.
 - iii. The approved entity shall not accept any amount from the beneficiary under the eligible agricultural extension project for training, education, guidance or any material distributed for the purposes of such training, education or guidance.
 - iv. The approved entity shall not get any direct or indirect benefit from the notified agricultural extension project except the deduction of the eligible expenditure in accordance with the provisions of section 35CCC of the Act, rule 6AAD and this rule.
 - v. The applicant shall furnish data sheet of oil palm farmers who have benefitted from the project to the Ministry of Agriculture.
 - vi. All expenses (not being expenditure in the nature of cost of any land or building), as reduced by the amount received from beneficiary, if any, incurred wholly and exclusively for undertaking an eligible agricultural extension project shall be eligible for deduction under section 35CCC:
Provided that any expenditure incurred on the agricultural extension project which is reimbursed or reimbursable to the assessee by any person, whether directly or indirectly, shall not be eligible for deduction under section 35CCC.
 - vii. Where a deduction under this section 35CC of the Act is claimed and allowed for any assessment year, deduction shall not be allowed in respect of such expenditure under any other provisions of the Act for the same or any other assessment year.
 - viii. The approved entity shall, on or before the due date of furnishing the return of income under sub-section (1) of section 139, furnish the following to the Commissioner of Income-tax or the Director of Income-tax, as the case may be, namely:-
 - a) the audited statement of accounts of the agricultural extension projects for the previous year along with the audit report and amount of deduction claimed under sub-section (1) of section 35CCC;
 - b) a note on the agricultural extension project undertaken by it during the previous year and the programme of agricultural extension project to be undertaken during the current year and the financial allocation for such programme; and

- c) a certificate from the Ministry of Agriculture, Government of India, regarding the genuineness of the agricultural extension project undertaken by the assessee during the previous year.
- ix. Under the project only product neutral training will be given except a short session on company's profile and products.

11. The Central Board of Direct Taxes shall withdraw the approval if the approved entity:-

- a) has ceased its activities; or
- b) its activities are not genuine; or
- c) its activities are not being carried out in accordance with all or any of the relevant provisions of the Act or Rules; or
- d) its activities are not being carried out in accordance with all or any of the conditions subject to which the notification is being issued.

Place: New-Delhi

Dated:16/02/2015

[Notification No. 14/2015/F.No. 203/31/2014-ITA.II]

RICHA RASTOGI, Under Secy.

नई दिल्ली, 17 फरवरी, 2015

का.आ. 377.—सर्वसाधारण की जानकारी के लिए एतद्वारा यह अधिसूचित किया जाता है कि केन्द्र सरकार द्वारा आयकर नियमावली, 1962 (उक्त नियमावली) के नियम 5ग और 5ड. के साथ पठित आयकर अधिनियम, 1961 (उक्त अधिनियम) की धारा 35 की उपधारा (1) के खंड (ii) के प्रयोजनार्थ अकादमी आफ साइंटिफिक एण्ड इनोवेटिव रिसर्च (एसीएसआईआर), नई दिल्ली (पैन-एएएलए1352पी) नामक संगठन को निर्धारण वर्ष 2014-15 और इससे आगे की अवधि के लिए निम्नलिखित शर्तों के अधीन अनुसंधान कार्यकलापों में लगे “विश्वविद्यालय कॉलेज अथवा अन्य संस्थान” की श्रेणी में अनुमोदित किया गया है, नामतः—

- (i) अनुमोदित संगठन को प्रदत्त राशि का उपयोग वैज्ञानिक अनुसंधान के लिए किया जाएगा;
- (ii) अनुमोदित संगठन अपने संकाय सदस्यों अथवा अपने नामांकित छात्रों के माध्यम से वैज्ञानिक अनुसंधान करेगा;
- (iii) अनुमोदित संगठन वैज्ञानिक अनुसंधान के लिए इसके द्वारा प्राप्त राशि के संबंध में अलग लेखा बहियां रखेगा जिनमें अनुसंधान करने के लिए प्रयुक्त राशि दर्शाई गई हो, ऐसी खाता-बहियों की उक्त अधिनियम की धारा 288 की उप धारा (2) के स्पष्टीकरण में यथा परिभाषित किसी लेखाकार से लेखा परीक्षा कराएगा और उक्त अधिनियम की धारा 139 की उप धारा (1) के अंतर्गत आय विवरणी प्रस्तुत करने की नियत तिथि तक ऐसे लेखाकार द्वारा विधिवत सत्यापित एवं हस्ताक्षरित लेखा परीक्षा रिपोर्ट मामले में क्षेत्राधिकार रखने वाले आयकर आयुक्त अथवा आयकर निदेशक को प्रस्तुत करेगा;
- (iv) अनुमोदित संगठन वैज्ञानिक अनुसंधान के लिए प्राप्त दान तथा प्रयुक्त राशि का अलग विवरण रखेगा और उपर्युक्त लेखा परीक्षा रिपोर्ट के साथ लेखा परीक्षक द्वारा विधिवत सत्यापित ऐसे विवरण की प्रति प्रस्तुत करेगा।

2. केंद्र सरकार यह अनुमोदन वापस ले लेगी यदि अनुमोदित संगठन:-

- (क) पैराग्राफ 1 के उप-पैराग्राफ (iii) में यथा उल्लिखित अलग लेखा बहियां रखने में असफल रहता है; अथवा
- (ख) पैराग्राफ 1 के उप-पैराग्राफ (iii) में यथा उल्लिखित अपनी लेखा परीक्षा रिपोर्ट प्रस्तुत में असफल रहता है; अथवा
- (ग) पैराग्राफ 1 के उप-पैराग्राफ (iv) में यथा उल्लिखित वैज्ञानिक अनुसंधान के लिए प्राप्त दान एवं प्रयुक्त धनराशि का विवरण प्रस्तुत करने में असफल रहता है; अथवा
- (घ) अपना अनुसंधान कार्य करना बंद कर देता है अथवा इसके अनुसंधान कार्य को वास्तविक नहीं पाया जाता है; अथवा
- (ङ.) उक्त नियमावली के नियम 5ग और 5ड. के साथ पठित उक्त अधिनियम की धारा 35 की उप-धारा (1) के खंड (ii) के प्रावधानों के अनुरूप नहीं होगा तथा उनका पालन नहीं करेगा।

[अधिसूचना सं. 17/2015/फा.सं. 203/06/2014-आकनि II]

ऋचा रस्तोगी, अवर सचिव

New Delhi, the 17th February, 2015

S.O. 377.—It is hereby notified for general information that the organization Academy of Scientific and Innovative Research (AcSIR), New Delhi (PAN – AAALA1352P) has been approved by the Central Government for the purpose of clause (ii) of sub-section (1) of section 35 of the Income-tax Act, 1961 (said Act), read with Rules 5C and 5E of the Income-tax Rules, 1962 (said Rules), from Assessment year 2014-2015 and onwards in the category of “University College and other Institution”, engaged in research activities subject to the following conditions, namely:-

- (i) The sums paid to the approved organization shall be utilized for scientific research;
 - (ii) The approved organization shall carry out scientific research through its faculty members or its enrolled students;
 - (iii) The approved organization shall maintain separate books of accounts in respect of the sums received by it for scientific research, reflect therein the amounts used for carrying out research, get such books audited by an accountant as defined in the explanation to sub-section (2) of section 288 of the said Act and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-section (1) of section 139 of the said Act;
 - (iv) The approved organization shall maintain a separate statement of donations received and amounts applied for scientific research and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to above.
2. The Central Government shall withdraw the approval if the approved organization:-
- (a) fails to maintain separate books of accounts as referred to in sub-paragraph (iii) of paragraph 1; or
 - (b) fails to furnish its audit report as referred to in sub-paragraph (iii) of paragraph 1; or
 - (c) fails to furnish its statement of the donations received and sums applied for scientific research as referred to in sub-paragraph (iv) of paragraph 1; or
 - (d) ceases to carry on its research activities or its research activities are not found to be genuine; or
 - (e) ceases to conform to and comply with the provisions of clause (ii) of sub-section (1) of section 35 of the said Act read with rules 5C and 5E of the said Rules.

[Notification No. 17/2015/F.No. 203/06/2014-ITA.II]

RICHA RASTOGI, Under Secy.

(औद्योगिक और वित्तीय पुनर्निर्माण अपीलीय प्राधिकरण)

नई दिल्ली, 20 फरवरी, 2015

का.आ. 378.—इस प्राधिकरण की अधिसूचना की निरंतरता में श्रीमती विजय शर्मा को इस प्राधिकरण में पी.बी.-3 रु. 15600—39100 + 6600 दिनांक 14 फरवरी, 2015 से एक वर्ष की अवधि या कार्मिक एवं प्रशिक्षण विभाग के कार्यालय ज्ञापन सं. 6/8/2009-स्था. (पे बैंड-2) दिनांक 17.6.2010 के अनुसार निर्धारित नियम और शर्तों पर एक वर्ष तक या अगले आदेश तक या कार्यालय बन्द होने तक जो भी पूर्व घटित/पहले हो, प्रतिनियुक्ति के आधार पर प्रमुख निजी सचिव के पद पर आगे बढ़ाया जाता है।

[मिसिल सं. 1/2/2011-प्रशा.]

विजय शर्मा, रजिस्ट्रार व प्रमुख कार्यालय

(APPELLATE AUTHORITY FOR INDUSTRIAL AND FINANCIAL RECONSTRUCTION)

New Delhi, the 20th February, 2015

S.O. 378.—In continuation of this Authority's Notification of even number dated 14.02.2014, the term of deputation of Smt Vijay Sharma, a Sr. Private Secretary of Income Tax Appellate Tribunal as Principal Private Secretary in this Authority on deputation basis in the PB-3, Rs. 15600—39100+6600 (Grade Pay) is hereby extended for a further period of one year w.e.f 14.02.2015 to 13.02.2016 or till

abolition of this Authority or until further orders, whichever is earlier, on the same terms and conditions, determined as per the instructions contained in DOPT OM No. 6/8/2009-Estt (Pay-II) dated 17.06.2010 as amended from time to time.

[F. No. 1/2/2011-Admn.]

VIJAY SHARMA, Registrar & Head of Office

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 27 फरवरी, 2015

का.आ. 379.—वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन अधिनियम, 2002 की धारा 21(1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार ने यह निर्णय लिया है कि श्री अशोक कुमार सिंह, निदेशक (रिकवरी), वित्तीय सेवाएं विभाग, भारत सरकार अपने कार्यभार के साथ-साथ प्रतिभूतिकरण से संबंधित लेन-देनों के पंजीकरण, वित्तीय आस्तियों के पुनर्गठन तथा संपत्तियों पर सृजित प्रतिभूति हित के प्रयोजन हेतु केन्द्र सरकार द्वारा केन्द्रीय रजिस्ट्रार, केन्द्रीय रजिस्ट्री के रूप में नियमित पदधारी की नियुक्ति किए जाने तक, केन्द्रीय रजिस्ट्रार और प्रबंध निदेशक एवं मुख्य कार्यपालक अधिकारी, केन्द्रीय रजिस्ट्री का अतिरिक्त प्रभार संभालेंगे।

[फा. सं. 56/05/2007(बीओ-II)-रिकवरी]

एम. सुब्रमणी, वरिष्ठ अनुसंधान अधिकारी (रिकवरी)

(Department of Financial Services)

New Delhi, the 27th February, 2015

S.O. 379.—In exercise of the powers conferred under section 21(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Central Government has decided that Shri Ashok Kumar Singh, Director (Recovery) Department of Financial Services, Government of India will hold additional charge for the post of Central Registrar and Managing Director and Chief Executive Officer, Central Registry for the purpose of registration of transactions relating to securitisation, reconstruction of financial assets and security interest created over the properties till the time a regular incumbent is appointed by the Central Government as Central Registrar, Central Registry.

[F. No. 56/05/2007(BO-II)-Recovery]

M. SUBRAMANI, Senior Research Officer (Recovery)

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 23 फरवरी, 2015

का.आ. 380.—केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाईन (भूमि में उपयोग का अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खंड (क) के अनुसरण में उक्त अधिनियम के अधीन उत्तर प्रदेश, उत्तराखंड और बिहार राज्यों के भीतर गेल (इंडिया) लिमिटेड की सभी पाइपलाईनों के लिए सक्षम प्राधिकारी के कार्यों का निर्वहन करने के लिए श्री अमर पाल सिंह, डिप्टी कलेक्टर, उत्तर प्रदेश सरकार, को प्राधिकृत करती है।

[फा. सं. एल-14014/01/'15-जी.पी.-II]

एस. पी. अग्रवाल, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 23rd February, 2015

S.O. 380.—In pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), Central Government hereby authorizes Shri Amar Pal Singh, Deputy Collector, Government of Uttar Pradesh to perform the functions of Competent Authority for all pipelines of GAIL (India) Limited, under the said Act, within Uttar Pradesh, Uttarakhand and Bihar States.

[F. No. L-14014/01/'15-GP.-II]

S. P. AGARWAL, Under Secy.

(परमाणु ऊर्जा विभाग)**(सामान्य सेवा संगठन)**

कल्पाक्कम, 23 फरवरी, 2015

का.आ. 381.—केन्द्रीय सरकार, दिनांक 26.9.2012 के पूर्व अधिसूचना सं. जीएसओ/17(27)/2012-आर/21/635 का अधिक्रमण करते हुए और लोक परिसर (अप्राधिकृत अधिभोगी के निष्कासन) अधिनियम, 1971 (1971 का 40वां) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, एतद्वारा नीचे सारणी के कॉलम (1) में दर्शाए

अधिकारी को, सरकार के राजपत्रित अधिकारी होने के नाते, उक्त अधिनियम के उद्देश्यों के लिए संपदा अधिकारी के रूप में नियुक्त करती है, जो प्रदत्त शक्तियों का प्रयोग करेंगे और उक्त अधिनियम के द्वारा अथवा अंतर्गत संपदा अधिकारी पर अधिरोपित कर्तव्यों का, उक्त सारणी के कॉलम (2) में विनिर्दिष्ट लोक परिसरों हेतु उनके क्षेत्राधिकार के स्थानीय सीमाओं के भीतर, निष्पादन करेंगे।

सारणी

कॉलम (1) अधिकारी का पदनाम	कॉलम (2) लोक परिसरों की श्रेणियां और क्षेत्राधिकार की स्थानीय सीमाएं
श्री. वाई. नागार्जुन प्रसाद प्रशासनिक अधिकारी-III, सामान्य सेवा संगठन, परमाणु ऊर्जा विभाग, कल्पाक्कम-603 102, कांचीपुरम जिला, तमिलनाडु	भारत सरकार, परमाणु ऊर्जा विभाग का अथवा उसके नियंत्रणाधीन कल्पाक्कम एवं अणुपुरम परिसर, तिरुक्कालुकुण्ड्रम तालुक, कांचीपुरम जिला, तमिलनाडु

[सं. सासेसं/17(27)/2014-आर/724]

पी. टी. मोहन, प्रशासनिक अधिकारी-III

(Department of Atomic Energy)**(GENERAL SERVICES ORGANISATION)**

Kalpakkam, the 23rd February, 2015

S.O. 381.—In supersession of earlier Notification No. GSO/17(27)/2012-R/635 dated 26.09.2012 and in exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971 (40 of 1971), the Central Government hereby appoints the Officer mentioned in column (1) of the Table below, being a Gazetted Officer of the Government, to be Estate Officer for the purposes of the said Act, who shall exercise the powers conferred and perform the duties imposed on Estate Officer by or under the said Act within the local limits of his/her jurisdiction in respect of the public premises specified in column (2) of the said Table;

TABLE

Column (1)	Column (2)
Designation of the Officer	Categories of Public Premises & local limits of jurisdiction
Shri. Y. Nagarjuna Prasad Administrative Officer-III General Services Organisation, Department of Atomic Energy Kalpakam - 603 102 Kancheepuram District Tamil Nadu	Premises in Kalpakkam and Anupuram, Thirukkalukundram Taluk, Kancheepuram District, Tamilnadu Belonging to or under the control of Department of Atomic Energy, Government of India

[Ref. No. GSO/17(27)/2014-R724]

P. T. MOHAN, Administrative Officer-III

श्रम और रोजगार मंत्रालय

नई दिल्ली, 23 फरवरी, 2015

का.आ. 382.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पांडयान ग्रामा बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 91/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/02/2015 को प्राप्त हुआ था।

[सं. एल-12011/84/2013-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 23rd February, 2015

S.O. 382.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 91/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of Pandyan Grama Bank and their workmen, received by the Central Government on 23/02/2015.

[No. L-12011/84/2013-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Tuesday, the 10th February, 2015

Present : K.P. PRASANNA KUMARI, Presiding Officer**Industrial Dispute No. 91/2013**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Pandyan Grama Bank and their workman)

BETWEEN:

The General Secretary : 1st Party/Petitioner Union
Pandyan Grama Bank
Employees Association
Near R.T.O. Office
Virudhunagar
Tamilnadu

AND

The Chairman : 2nd Party/Respondent
Pandyan Grama Bank
Administrative Office

2-70-1 Collectorate Complex
Virudhunagar
Tamilnadu

Appearance :

For the 1st Party/Petitioner : M/s S. Anbazhagan,
Advocates

For the 2nd Party/Respondent : M/s N.G.R. Prasad,
V. Stalin, Advocates

AWARD

The Central Government, Ministry of Labour and Employment vide its Order No. L-12011/84/2013-IR (B.I) dated 21.10.2013 referred the following Industrial Dispute to this Tribunal for adjudication.

The Schedule mentioned in that order is :

“Whether the action of the management of Pandyan Grama Bank in not regularizing the services of 116 temporary employees who have rendered more than 240 days of continuous service is justified? To what relief are they entitled?”

2. On receipt of Industrial Dispute this Tribunal has numbered it as ID 91/2013 and issued notices to both sides. Both sides have entered appearance through their counsel and filed Claim and Counter Statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner association is representing the workers of the Respondent Bank. The Respondent Bank is established under the Regional Rural Banks Act. The Indian Overseas Bank is the sponsor bank of the Respondent Bank. The Respondent Bank has 220 branches, 4 Regional Offices and an Administrative Office. It has only 86 employees as Messengers presently designated as Office Attendants, as permanent employees. More than 150 posts of Messengers/Office Attendants are vacant for the past 10 years. In the absence of hands as Messengers/ Office Attendants the Managers of the branches were not in a position to carry on day to day functions. So the Managers were given power to engage employees on daily wage basis. Almost all the Branch Managers have engaged qualified persons as daily wage employees in their respective branches. This was the practice for almost 10 years. The workmen employed on daily wage basis are doing the same work as that of a Permanent Messenger. They attend office at 0930 AM. They perform all the work allotted to them by the Manager of the Branch. They maintain the communication registers received and compile the communications, despatch all the outgoing communications and maintain the registers, stitch and maintain all the vouchers, maintain voucher register and do several other works. In many branches data entry is also made by these workers. They are paid a

meager sum of Rs. 175/- per day as wages. The petitioner demanded the regularization of these workmen and when the Respondent refused to comply with the demand, dispute was raised before the Conciliation Officer. An order may be passed holding that the action of the Respondent in not regularizing the services of 116 temporary employees who have rendered more than 240 days of continuous service is not justified and also directing the Respondent to regularize the service of these 116 workmen from the date of their appointment.

4. The Respondent has filed Counter Statement contending as below:

The petitioner is not entitled to any relief. The members of the Petitioner Union were employed only as casual labours on daily wage basis. They were not recruited through Employment Exchange. The recruitment of Messengers to the Bank's service is governed by Government of India guidelines. As per the guidelines, they should be sponsored by Employment Exchange. The casual employment was not on any sanctioned post nor on scale wages. It is not admitted that 116 employees mentioned in the Claim Statement have completed 240 days of continuous service. The burden of establishing this is on the workmen. Unless a person has been recruited as per the rules and there is a sanctioned post the question of regularization does not arise. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 to WW4 and documents marked as Ext.W1 to Ext. W15 and M1.

6. The points for consideration are:

- (i) Whether the action of the Respondent in not regularizing the concerned temporary employees is justified?
- (ii) What, if any, is the relief to which the workmen are entitled?

The Points

7. The Petitioner Union has raised the dispute on behalf of 116 persons who are working as Messengers/Office Attendants in the different branches of the Respondent Bank on temporary basis. It is stated that all the temporary workmen have completed 240 days of continuous service and there are even persons who have completed more than 17 years of service as temporary workers. According to the petitioner all these persons have the required qualification and they were engaged by the concerned Branch Managers on the basis of the power that was given to them in the wake of the crisis that has arisen in the Bank on account of absence of regular hands working as Messengers/Office Attendants.

8. The Respondent has inter alia raised a contention in the Counter Statement that the petitioner has no locus

standi to raise the dispute on behalf of the concerned workmen who are only temporary employees. The petitioner seems to be a recognized union with capacity to negotiate and bargain with the Respondent. The Union is a signatory to the settlement which is marked as Ext.W1 entered into on behalf of temporary workmen. It is very much apparent that the concerned workmen are also members of the Union. So nothing prevents the petitioner union in taking up the cause of these workmen and seeking their regularization.

9. The petitioner has examined four witnesses to prove under what circumstances the concerned workmen were engaged. There is the evidence given by WW2 who is one of the temporary employees on whose behalf the dispute is raised. This witness has stated that he is working as Temporary Office Attendant at Ettayapuram road Branch for the past 7 years. He has also stated that he was engaged by the Branch Manager though he was not given any appointment order. He has stated that he used to report for work at 0930 AM and worked upto 0630 PM. He was doing all odd jobs in the branch as required. According to him the work is continuous and perennial in nature without which the Bank cannot function effectively. He has completed more than 240 days as temporary employee. There is no regular messenger in the Branch in which he is working. The Respondent Bank has only 30 regular messengers at present. All others are working on daily wage basis, according to him.

10. There is also the evidence of WW1, the Secretary of the Petitioner Association regarding employment of the Temporary Messengers.

11. The petitioner has examined two Bank Managers also to establish the case. WW3 working as Manager of Kalkurichi Branch, Virudhanagar District has stated that the Messenger in his Branch is working on temporary basis. He is to take the vouchers from the Cashier's Box to the Manager, to arrange the vouchers and stitch them and maintain a voucher register also. The Messenger will also be accompanying the Cashier to carry cash. He will be doing the work of dispatch also. According to WW3, he has engaged two persons as Messengers, in two different branches at different times. According to him when the number of branches has increased there was need to engage Messengers. There is also the evidence of WW4, another Branch Manager of the Respondent Bank who has deposed that out of the two messengers in his branch, one is temporary and was engaged by his predecessor.

12. The petitioner has furnished a list of 116 Temporary Messengers with their address, the date on which they have joined and the respective branch in which they are working. From the list it could be seen that there are persons who were working as Messengers even for a period of 17 years. The petitioner seems to have applied to the

Respondent Bank under Right to Information Act for information regarding the steps taken by the bank for regularization of Temporary Messengers. It is seen from Ext.W3 the reply received that the Board Meeting of the Bank has passed a resolution to recommend regularization of Temporary Messengers. It is also seen from this that the resolution has been referred to the sponsor bank for approval as early as on 03.12.2011. At the instance of the petitioner the Respondent has produced the copy of the letter addressed by it to its sponsor bank and this has been marked as Ext.W15. The letter shows that the Bank has decided to create a panel of temporary workers who had more than 5 years service as on 31.03.2010. The letter is written to the sponsor Bank to permit regularization of these persons. Thus it could be seen that the Bank itself has realized that the temporary workers were working for a long time and are to be regularized.

13. The petitioner has produced copies of some payment vouchers pertaining to the branches in which WW3 and WW4 are working. Ex.W10, Ext.W11 and Ext.W12 (series) were proved through WW3. Ext.W13 (series) vouchers are proved through WW4. These witnesses have stated that the Temporary Messengers are paid through vouchers.

14. There is also the evidence given by MW1 on behalf of the Respondent. MW1 has admitted that there are 246 branches for the Bank while there are only 53 permanent messengers working in the Bank. He has further stated that normally each branch will have one sanctioned post of Messenger and so there should be sanctioned strength of 246 Messengers.

15. Not much evidence is available on the side of the petitioner to prove the exact period of service of the concerned workers. Only one of the temporary workmen on whose behalf dispute is raised has been examined. This witness examined as WW2 has stated that he has been working as Temporary Messenger for about 7 years. There is also the evidence given by WW3 that the temporary messenger in the branch in which he is working has been in this bank even before he joined in August 2011. This much evidence on the side of the petitioner would not show on which date each of the workmen on whose behalf the dispute is raised have joined. However, as already stated, the petitioner has furnished a list of the concerned workmen showing the period for which they have been working in the respective branches. When the conduct of the Respondent and the circumstances are taken into account there is no necessity to disregard this list which is marked as Ext.W5. There is the evidence of WW3 an Officer of the Respondent Bank that recruitment as per the procedure for the post of Messenger has not taken place for a long time, from the year 1977. Ext.W1 shows that those who were then working as Temporary Messengers were regularized. Even after that there was no recruitment and the practice of engaging Temporary

Messengers continued. Ext.W15 the resolution of the Board of the Respondent itself states that some of the temporary workmen have been working for more than 15 years. When this is taken into account there is no reason to reject the period of service of each of the concerned workman shown in Ext.W5.

16. In Ext.W15 itself it is stated that though Messengers were engaged on temporary basis they were being engaged after assuring that they are having the qualification prescribed by the recruitment procedure. Thus there is no case for the Respondent also that the persons concerned are not having the qualification.

17. The contention that is raised on behalf of the Respondent is that the engagement of these workmen not being in accordance with the recruitment rules, they are not entitled to regularization. It has been pointed out on behalf of the petitioner that the Bank has been engaging in unfair labour practice by employing these persons on temporary basis for a long time. According to the counsel for the petitioner the work done by the concerned workmen being perennial in nature and also because the Bank was engaging in unfair labour practice they are entitled to regularization.

18. The counsel for the petitioner has pointed out that the dictum laid down in Uma Devi's case is not applicable to the facts of the present case. The Counsel has referred to the decision in U.P. STATE ELECTRICITY BOARD Vs. POORAN CHANDRA PANDEY AND OTHERS reported in 2007 11 SCC 92 in this respect. In this the Apex Court has observed that Uma Devi's case was being applied mechanically without reference to the facts of the particular case. It has further been held that the decision in Uma's Devi case cannot be applied to a case where regularization has been sought for in pursuance of Article-14 of the Constitution. The above was a case where the writ petitioners have put in about 22 years of service. It was found that it will not be reasonable if their claim for regularization is denied even after such a long period of service. In the decision in MAHARASHTRA STATE ROAD TRANSPORT CORPORATION Vs. CASTERIBE RAJYA P. KARMACHARI SANGHATANA reported in 2009 8 SCC 556, while considering the provisions of MAHARASHTRA TRADE UNIONS ACT it was held that Uma Devi case does not denude the industrial and labour courts of their statutory power under the said Act to order permanency of workers who have been victim of unfair labour practice on the part of the employer. In the decision in HARINANDAN PRASAD AND ANOTHER Vs. MANAGEMENT OF FOOD CORPORATION AND ANOTHER reported in 2014 7 SCC 190, the Apex Court has held that though in the MAHARASHTRA Road Transportation case the provisions of MRTU Act were considered to ascertain the powers conferred upon the Industrial Tribunal, the powers of the industrial adjudicator under the ID Act are also equally wide. The Act deals with

industrial disputes, provides for conciliation, adjudication and settlements and regulates the rights of the parties and thus by empowering adjudicating authorities under the Act to give reliefs such as reinstatement of wrongfully dismissed or discharged workmen which may not be possible in common law or justified under the terms of contract between the employer and such workmen. The legislature has attempted to frustrate the unfair labour practices and secure the policy of collective bargaining as a road to industrial justice by the Act, it has been held. Thus it could be seen that the power of the industrial court is not curtailed by the decision in Uma Devi case when it comes to unfair labour practice, resorting to irregular engagement and keeping worker temporarily for long years.

19. The counsel for the Respondent has referred to a few decisions to substantiate his argument that the concerned workmen are not entitled to regularization. In the decision in KENDRIYA VIDYALAYA SANGHATHAN AND OTHERS VS. L.B SUBRAMANYESWARA AND ANOTHER reported in 2007 5 SCC 326 referred to by the Counsel the finding is that the concerned workmen continued in service for a long time under interim orders of the High Court and so they did not satisfy the tests of equality, reservation or the rule of law as adumbrated in Uma Devi's case and so they are not entitled to regularization. In the decision in COUNCIL FOR SCIENTIFIC AND INDUSTRIAL RESEARCH AND OTHERS VS. RAMESH CHANDRA AGARWAL AND ANOTHER reported in 2009 3 SCC 35 the question under consideration was regarding the fixation of a cut-off date for extending the scheme for absorption. The Apex Court has held that there is no illegality in fixing the cut-off date and the State is entitled to do so. The observation in this decision is not applicable to the facts of the present case. In the decision in STATE OF KARNATAKA AND OTHERS VS. M.L. KESARI AND OTHERS reported in 2010 9 SCC 247 the distinction between illegal and irregular appointments were referred to. In the discussion above I have already referred to the nature of the appointment of the concerned workmen which could not be termed illegal but only irregular. The workmen were working continuously not with the help of any order of any Court but have been continuously working so.

20. In the present case the Respondent Bank in spite of it having a recruitment procedure has not been going for the procedure to fill up the vacancies of Messengers. It has been engaging persons on temporary basis and has been keeping them for years. It is clear from the evidence that all of them are working on sanctioned posts. They come within the qualification prescribed as per the Recruitment Rules also. The work done by them is perennial in nature it being in respect of the day to day affairs of the Respondent Bank. The business of the Bank could not be

conducted without the assistance of the messengers. They are part and parcel of the institution.

21. The bank itself has decided to regularize temporary messengers who have completed more than 5 years service as on a particular date. They passed a resolution to this effect and had sent the recommendation to the sponsor bank. The evidence let in is that the Bank has not received any reply in this respect.

22. So far as those workmen who were working for a considerable period of time are concerned the Bank has recommended to regularize them. So far as others are concerned they being persons who were engaged in the recent past they were not considered for regularization. The Bank has fixed 31.03.2011 as the date for completion of the period of 5 years. For the purpose for regularization, the period of 5 years and the cut-off date fixed by the Bank can be accepted. Those persons who have completed their temporary service for 5 years on this date are entitled to regularization from that date i.e. 31.03.2011. So far as others are concerned it is for the Bank to resort to the normal recruitment process and consider the remaining persons also during such recruitment taking into account their age on which they joined the Bank as the relevant date.

In view of my discussion above an award is passed as follows:

The Respondent is directed to regularize those temporary Messengers who have completed 5 years in service as on 31.03.2011, with effect from that date. The claim of the remaining persons shall be considered during recruitment as per the rules treating their age on which they joined the Bank as the relevant date.

The reference is answered accordingly.

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/ : WW1, Sri J. Mathavaraj
Petitioner Union : WW2, Sri P. Srinivasan
WW3, Sri P.S. Bosepandian
WW4, Sri D. Samuel Jothikumar

For the 2nd Party/ : MW1, Sri K. Ramasubba
Management

Documents Marked :

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	29.01.1993	Memorandum of Settlement between the Petitioner Association and the Respondent Bank

Ex.W2	21.07.2012	Application by the petitioner under RTI Act, 2005
Ex.W3	21.08.2012	Reply by the PIO for the RTI Application of the petitioner
Ex.W4	20.05.2013	Industrial Dispute raised by the petitioner before the Asstt. Commissioner of Labour
Ex.W5	31.08.2013	Details of the temporary messengers filed before the Asstt. Commissioner of Labour in the Industrial Dispute
Ex.W6	28.06.2013	Failure report sent by the Assistant Commissioner to Government of India
Ex.W7	-	Payment Voucher
Ex.W8	Jan to June 2014	Maintenance of Voucher Register
Ex.W9	-	List of Executive Committee for PGB Officers Union
Ex.W10 (Series)	-	Voucher Register maintained by Muthaiah-Temporary Messenger in Kalkurichi Branch-PGB
Ex.W11 (Series)	-	Fund Movement Register of Kalkurichi Branch
Ex.W12 (Series)	-	Payment voucher along with Inspection Report of Kalkurichi Branch
Ex.W13 (Series)	-	Payment voucher to Temporary Messenger at Palaganatham Branch
Ex.W14	-	HR Policy for RRBs
Ex.W15	03.12.2011	Respondent letter to their Sponsor Bank

On the Management's side

Ex.No.	Date	Description
Ex.M1	13.07.2010	Regional Rural Banks (Appointment and Promotion of Officers and Employees) Rules, 2010.

नई दिल्ली, 23 फरवरी, 2015

का.आ. 383.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या

35/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/02/2015 को प्राप्त हुआ था।

[सं. एल-12012/28/2011-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 23rd February, 2015

S.O. 383.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 35/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 23/02/2015.

[No. L-12012/28/2011-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD**

In the matter of reference U/s 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 35 of 2011

Employer in relation to the management of S.B.I Regional Business Office, Jamshedpur

AND

Their workman.

Present :- Sri R.K.Saran, Presiding Officer**Appearances:**

For the Employers : Sri S.N.Goswami, Advocate

For the Workman : Sri B.B.Pandey, Advocate.

State : Jharkhand

Industry : Banking

Dated 07/01/ 2015

AWARD

By order No.-L-12012/28/2011 IR-(B-I), dated. 29/06/2011 the Central Govt. in the Ministry of Labour has, in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Regional Manager, State Bank of India, Regional Business Office, Jamshedpur in imposing the penalty of dismissal without notice on shri Satya pal Singh, Ex- Senior Assistant, Golmuri Branch vide their order dated 21/01/2008, is legal and justified? To what relief the workman is entitled?”

2. The case is received from the Ministry of Labour on 13.07.2011. After receipt of reference, both parties are noticed, the workman files their written statement on 06.05.2013. The management also files written statement – cum- rejoinder on 26.06.2013. Document of the management marked as M-1 to M-8 and document of workman marked as W-1 to W-11.

3. The allegations against the workman was, that he misappropriated a sum of two lakhs and odd, and after detection, he deposited two lakhs and odd in two phases. Enquiry already held as fair and proper.

4. It is submitted by the workman that soon after it is detected, he returned the money. Bank staff taking money and returning the same after detection is a serious charge. The Tribunal is not inclined to interfere with the orders passed by the management.

5. Considering the facts and circumstances of the case, I hold that the action of the management of Regional Manager, State Bank of India, Regional Business Office, Jamshedpur in imposing the penalty of dismissal to Shri Satya pal Singh, Ex- Senior Assistant, Golmuri Branch vide their order dated 21/01/2008 is justified and proper. Accordingly he is not entitled to get any relief.

This is my award.

R.K.SARAN, Presiding Officer

नई दिल्ली, 23 फरवरी, 2015

का.आ. 384.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय रिजर्व बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 92/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/02/2015 को प्राप्त हुआ था।

[सं. एल-12011/01/2004-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 23rd February, 2015

S.O. 384.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 92/2004) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of Reserve Bank of India and their workmen, received by the Central Government on 23/02/2015.

[No. L-12011/01/2004-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT : Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

REFERENCE NO 92 OF 2004

PARTIES : The General Secretary,
RBI Workers' Organization,
Patna 6/E, Rajendra Nagar, Patna

Vs.

The Regional Director,
Reserve Bank of India,
South Gandhi Maidan, Patna

Order No. L-12011/01/2004-IR (B-I)
dt.07.07.2004.

APPEARANCES :

On behalf of the : Mr. O.P. Bihari, Workmen's
workman/Union Representative

On behalf of the : Mr. Bal Chandra Nirmal &
Management A.K.M. Mustaque
Management Reps.

State : Bihar

Industry : Banking

Dated, Dhanbad, the 22nd Jan. 2015

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No.L-12011/01/2004-IR (B-I) dt.07.07.2004.

SCHEDULE

“Whether the stand of the Reserve Bank Workers' Organization, Patna in refusing to compensate for loss of ½ days post lunch work on 16.10.2001 and demanding that there should be no wage cut these grounds by the Management of RBI is legal and justified? If so what reliefs the workmen are entitled to?”

2. None is present to represent the Sponsoring Union. Mr. Bal Chandra Nirmal, the Manager is present to represent OP/Management. From the perusal of case record, it transpires that the Sponsoring Union appears to be reluctant in pursuing its case for final adjudication.

Under this circumstance, it is futile to proceed with this case further. It also appears that the case is fixed for evidence on the part of the Management for the last two dates. It also reveals from the record that WWI (Arun Kr. Jha) did not appear for cross examination and evidence of

workmen was closed on 17.09.2014 at the prayer of workmen's Representative. Accordingly, the evidence of the workmen Representative has no value at all, if the WW-I is not cross-examined, or there is no need to examine any witness of the Management. Hence the case is closed as 'No Industrial Dispute' existing between the parties. Accordingly, an order of "No Dispute Award" is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 23 फरवरी, 2015

का.आ. 385.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 30/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/02/2015 को प्राप्त हुआ था।

[सं. एल-12012/71/2011-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 23rd February, 2015

S.O. 385.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 30/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 23/02/2015.

[No. L-12012/71/2011-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

**BEFORE SHRI J. P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/30/2011

Date: 18.12.2014

Party No.1(a) : The Assistant General Manager (NRI Services),
State Bank of India,
Local Head Office,
C-6 G Block,
Bandra Kurla Complex,
Bandra East, Mumbai-400051

(b) : The Branch Manager,
State Bank of India,
MIDC Butibori Branch,
Plot No. X-9,
MIDC Butibori Area,

Near Police Station,
Wardha Road, Butibori,
Distt- Nagpur-441122

Versus

Party No. 2 : Shri Prashant Kashaorao Thakre,
R/o Juni Wasahat,
Ward No. 2,
Butibori,
Nagpur (MS)-441108.

AWARD

(Dated: 18th December, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of State Bank of India, Local Head Office and their workman, Shri Prashant Kashaorao Thakre, for adjudication, as per letter No.L-12012/71/2011-IR (B-I) dated 22.11.2011, with the following schedule:-

"Whether the action of the management of State Bank of India, Butibori in terminating the services of Shri Prashant Kashaorao Thakre w.e.f. 01.12.2010 without following the mandatory provisions of section 25-F of ID Act, 1947 is legal and justified? To what relief the workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Prashant Kashaorao Thakre, ('the workman' in short), filed the statement of claim and the management of State Bank of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim that he first came to be appointed with party no.1-a on 08.06.2006 as office boy and he was required to carry out the work of gardening and cleaning and he was also required to work in the canteen and as a messenger and later on, he performed all the official work to regular nature required to be done by the peon and the said work is available with the bank round the year and he had worked for more than 240 days of continuous service with party no.1-a and 1-b and he was deemed to be a permanent employee and his service was clean and excellent and he was illegally dismissed from service w.e.f. 30.11.2010 and party no. 1-a appointed one Shri Anup Saise in his place from 23.11.2010 and he was working sincerely and continuing without any break from the date of his initial appointment till the date of his illegal dismissal.

The further case of the workman is that party no.1-b is burdened with heavy business transactions and as such, there is necessity of support staff for the branch and he was working for more than 12 hours and sometimes even

after the closing hours of the branch and he was getting Rs. 3000/- as salary and he was getting extra amount of Rs. 50/- to Rs.250/- for doing extra work, which was being paid to him in cash on vouchers being signed and passed by the Branch Manager and on his applications, the salary was being paid in his account No. 30181633409 and party no.1-a had maintained register of all the work carried out by him and so also, the charges paid to him and though he was appointed as temporary office boy, party no.1-b by appointing persons on temporary basis is only with the intension to avoid the benefits of giving them the benefits of permanent post and such action amounts to unfair labour practice under the Act and so also under MRTU Act and P.U.L.P. Act.

It is also pleaded by the workman that he is a workman and party no.1-a and 1-b are industry as per the provisions of the Act and before termination of his services, no seniority list was prepared and published by party no.1-a and 1-b and neither one month's notice or notice pay in like of the notice was given to him and the mandatory provisions of sections 25-F and 25-G were not complied with by them and he was illegally terminated from services without following the due process of law and the party no.1 in the reply filed by them before the conciliation officer stated that his appointment was illegal and party no.1-b had no authority to appoint a person in service and there is prescribed procedure of recruitment and party no.1-a and 1-b are required to follow the same for appointment of any person in service and as he was paid regularly by the party no.1-a and the amount was properly sanctioned by the Accounts Division, it cannot be said that the appointment was not according to the procedure and he is out of employment from the date of his illegal termination and he has no source of income of maintain himself and his family and he is entitled for reinstatement in service with continuity, full back wages and all consequential benefits.

3. The party no.1-a and 1-b filed a joint written statement and they after denying all the adverse allegations made in the statement of claim have pleaded inter-alia that the workman has misquoted the facts and law, which appear to have arisen due to misconception and misconstructions of the facts and law involved in the case and the workman on his own admission had worked mainly and substantially as a "Canteen Boy" with the local implementation committee ("LIC" in short), constituted in each establishment, for the welfare of the staff working in that establishment and he was required to prepare the tea/snacks and cleaning of canteen utensils and normally, he had to work for about two hours daily and the workman left the job on his own volition, as he wanted the permanent job of the Bank, which he was aware, not at all possible and the persons engaged by the LIC are not the employees of the Bank.

The further case of the party No.1 is that the workman was also engaged purely on casual and daily wages basis in casual vacancies, intermittently, but without continuity in service, due to administrative exigencies for doing the work of sweeping the courtyard of the branch, filling water in coolers etc. and such engagement of the workman was done only during business hours, when the regular employers were on leave and the workman has not worked for 240 days in any calendar year or in the twelve calendar months preceding the date of his alleged disengagement and the workman was engaged on temporary/daily wages/casual basis by the branches, who had/have authority to appoint any person in such category and as the engagement of the workman was purely casual and daily wages basis, he cannot claim permanency and he cannot have any legitimate expectations of reinstatement or absorption or permanency and has no enforceable right for reinstatement.

It is also pleaded by party no.1 that recruitment is done in the Bank as per the well laid down Rules, policies and procedures and the workman is not entitled to any relief.

It is also averred by the party no.1 that as the workman was unwilling to do the job of canteen boy and left the said on his own volition, Shri Anup Saise was engaged to work as a canteen boy by the LIC and not by the bank and there was no employer and employee relationship between them and the workman and the workman was getting fixed amount of Rs.100/- per day from the LIC for his service as canteen boy and he was getting the wages depending upon type of work and the time taken to do such work, whenever his services were used on casual vacancies by the bank and therefore, there was no question of extending the benefits of permanent employee to the workman and it has not committed any unfair labour practice under any Act and the workman is not entitled to any relief.

4. No rejoinder has been filed by the workman.

5. In order to prove his case, the workman has examined himself as a witness. The party No.1 has not adduced any oral evidence and has relied on documentary evidence only.

6. The workman in his examination-in-chief on affidavit has reiterated the facts mentioned in the statement of claim. However, in his cross-examination, the workman has admitted that he was making tea in the branch and also cleaning the utensil and he was working as a canteen boy and besides working as a canteen boy, he was also being engaged to sweep and clean the branch premises and to fill water in the coolers and he was also doing the work of sorting and arranging of vouchers and he was engaged on daily wages basis and no appointment letter was issued to him by the Bank and wages was being paid to him on vouchers and he has not filed any document to show that

he had worked for 240 days in any calendar year and Shri Anoop Saise was engaged to prepare tea in the branch and he was engaged by the Branch Manager and he did not go through the process of selection of sub-staff as provided in the Rules of the Bank and he did not appear in any interview and he was not medically examined and there was also no police verification and Bank had also not given any advertisement for appointment of any sub—staff.

7. At the time of argument, it was submitted by the learned advocate for the workman that the workman was first appointed on 08.06.2006 at Butibori branch as office boy by party No.1 and he was required to work for more than 12 hours and he was getting regular salary of Rs.3000/- per month and was also being paid extra amount ranging from Rs.50/- to Rs.250/- on vouchers for doing extra work and the workman had completed 240 days of work and he was performing the work of regular nature and he was continuously doing the same and party No.1 has completely failed to prove that the workman was appointed by the LIC, as no evidence has been adduced by party No.1 in support of such claim and it is proved beyond doubt from the evidence of the workman on affidavit that he had been working continuously and had completed more than 240 days of service in a year and the service of the workman was terminated without compliance of the mandatory provisions of section 25-F of the Act and is therefore, illegal and the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the party No.1 that the workman mainly and substantially worked as a canteen boy with LIC and he was not the employee of the Bank and the workman was engaged sometimes purely on casual/daily wages basis, in casual vacancies, intermittently but without continuity, due to administrative exigencies for sweeping of the branch premises and filling water in the coolers etc., when the regular employees were on leave and the workman had not worked for 240 days in any calendar year or in the 12 calendar months preceding the date of his alleged disengagement and as the engagement of the workman was purely on casual and daily wages basis, he cannot claim permanency in the Bank's service, as the engagement of the workman itself was void ab-initio, being without authority and the workman is not entitled to any relief.

In support of such submissions, the learned advocate for the party No.1 placed reliance on the decisions reported in AIR 2006 SC- 1806 (Secretary, State of Karnataka Vs. Umadevi), AIR 1996, SC – 1565 (State of Himachal Pradesh Vs. Suresh Kumar Verma), (2000) 5 SCC – 531 (State Bank of India Vs. State Bank of India Canteen Employees' Union),) and 2007 I CLR – 48 (India Drugs and Pharma ceuticals Ltd. Vs. Workmen).

9. In this case, it is the case of the workman that he had worked continuously from 08.06.2006 to 30.11.2010 and his service was terminated on 30.11.2010 and that he worked for 240 days in the year preceding his termination. The claim has been denied by the management. It is the case of the management that the workman was engaged intermittently as and when required on purely casual and daily wages basis and the workman joined as a canteen boy in the canteen, managed by LIC and he had not worked for 240 days in any calendar year or in the 12 calendar months preceding the date of his alleged disengagement.

10. In view of the stands taken by the parties, I think it apt to mention the principles enunciated by the Hon'ble Apex Court in this regard, before embarking upon the discussion of the merit of the case.

The Hon'ble Apex court, in the decision reported in AIR 1966 SC-75 (Employees, Digawadih Colliery Vs. Their workmen) have held that:-

“Though section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of “Continuous Service” need not be read into section 25-B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended section 25-B only consolidates the provisions of section 25(B) and 2(eee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact, the amendment of section 25-F of the principal Act by substituting in clause (b) the words “for every completed year of continuous service” has removed a discordance between the un-amended section 25 B and the un-amended Cl. (b) of section 25-F. No uninterrupted service is necessary, if the total service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a vagueness which existed in the un-amended section 25-B”.

In the decision reported in AIR 1981 SC-1253 (Mehanlal Vs. M/s. Bharat Electronics Ltd.), the Hon'ble Apex Court have held that,

“Industrial Disputes Act (14 of 1947). Section 25-B (1) and (2)- Continuous service-Scope of sub-sections (1) and (2) is different, (words and phrases-Continuous Service)

Before a workman can complain of retrenchment being not in consonance with Section 25-F, he has

to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25-B as the dictionary clause for the expression “continuous”. Both in principle and are precedent it must be held that section 25-B (2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25-B and chapter V-A”.

The Hon’ble Apex Court in the decision reported in AIR 2003 SC-38 (M/s. Essen Deinay Vs. Rajeev Kumar) have held that:

“Industrial Disputes Act (14 of 1947- S.25-F, 10-Retrenchment compensation-Termination of services without payment of –Dispute referred to Tribunal-Case of workman/claimant that he had worked for 240 days in a year preceding his termination- Claim denied by management-Onus lies upon claimant to show that he had in fact worked for 240 days in a year-In absence of proof of receipt of salary, the affidavit of the workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination.”

The Hon’ble Apex Court in the decision reported in (2005) 5 SCC-100 (Reserve Bank of India Vs. S.Mani) have held that:-

“Industrial Disputes Act, 1947-Ss.25-F, 25-N,25-B and II-240 days’ continuous Service-Onus and burden of proof with respect to-Evidence sufficient to discharge-Failure of Employer to prove a defence (of abandonment of service) if sufficient or amounted to an admission, discharging the said burden of proof on the workman discharged, merely because employer fails to prove a defence or an alternative plea of abandonment of service – Filing of affidavit of workman to the effect that he had worked for 240 days continuously or that the workman had repeated representations or raised demands for reinstatement, is not sufficient evidence that can discharge the said burden-Other substantive evidence needs to be adduced to prove 240 days’ continuous service-Instances of such evidence given.

The initial burden of proof was on the workmen to show that they had completed 240 days of service. The Tribunal did not consider the question from that angle. It held that the burden of proof was upon the appellant on the premise that they have failed to prove their plea of abandonment of service.

Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court of Tribunal to come to the conclusion that a workman had in fact, worked for 240 days in a year. Such evidence might include proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period or the terms and conditions of his offer of appointment, or by examination of any other witness in support of his case.

So, it is clear from the principles enunciated by the Hon’ble Apex Court in the decisions mentioned above that for applicability of section 25-F of the Act, it is necessary to prove that the workman worked for 240 days in the preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman.

11. The present case in hand is now to be considered with the touch stone the principles enunciated by the Hon’ble Apex Court as mentioned above and it is to be found out, if the workman has been able to prove that he had in fact worked at least for 240 days in a year preceding his termination. According to the workman, his services were orally terminated on 30.04.2004. So, it is necessary to prove that in the preceding twelve calendar months of 30.04.2004, the workman had worked for 240 days.

12. In this case except his oral evidence on affidavit the workman has not adduced any other evidence to prove that in fact he had worked for 240 days in the preceding 12 calendar months of the alleged date of termination i.e. 30.11.2010. On the other hand, the evidence adduced by the party No.1 shows that the workman had not been engaged for 240 days in the preceding 12 calendar months of 30.11.2010. As the workman did not work for 240 days in the preceding 12 calendar months of 30.11.2010, the provisions of section 25-F of the Act do not apply to his case.

The workman has admitted that Shri Anoop Saise is being engaged to prepare tea in the branch. As, Anoop has not been engaged in place of the workman by the party No.1 in the work of the Bank, the provisions of section 25-G are also not applicable to his case. Hence, it is ordered:

ORDER

The reference is answered in the negative and against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 23 फरवरी, 2015

का.आ. 386.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबंध निर्योजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 27/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/02/2015 को प्राप्त हुआ था।

[सं. एल-12012/44/2011-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 23rd February, 2015

S.O. 386.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 23/02/2015.

[No. L-12012/44/2011-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/27/2011

Date: 08.12.2014

Party No.1 : The Dy. General Manager
(O & C-III) & Appellate Authority,
State Bank of India,
Zonal Office, S.V. Marg,
Post Box No.37,
Nagpur-440001

1(b) : The Regional Manager &
Disciplinary Authority,
State Bank of India,
R.B.O., Dongaon,
Buldhana(M.S.)

Versus

Party No.2 : Shri Prakash Nathuji Hedau,
C/o Manohar N. Hedau,
“Maineewala”, Subhash Ward,
Taluka, At and Post-Mohadi,
Distt. Bhandara-441909.

AWARD

(Dated: 8th December, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) (“the Act” in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Appellate Authority, State Bank of India and their workman, Shri Prakash Nathuji Hedau, for adjudication, as per letter No.L-12012/44/2011-IR (BI) dated 10.10.2011, with the following schedule:-

“Whether the action of the management of State Bank of India, Nagpur in imposing the penalty of discharge from service with superannuation benefits on Shri Prakash Nathuji Hedau vide their order dated 26.05.2006 is legal and justified? To what relief the workman is entitled?”

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman Shri Prakash Nathuji Hedau, (“the workman” in short) filed the statement of claim and the management of State Bank of India (“party no.1” in short) filed the written statement.

The case of the workman as presented in the statement of claim is that he came to be appointed by party no.1 as a clerk-cum-typist w.e.f. 27.09.1991 and was posted at Dongaon branch in the district of Buldana and thereafter, he was transferred to various places by party no.1 and his entire service carrier was clean and excellent and charge sheet dated 13.09.2003 containing various false charges were levelled against him and enquiry was ordered by party no.1, which resulted his discharge from service, vide order dated 26.05.2006 and the appeal preferred by him against the order of punishment was rejected by the Appellate Authority and the Appellate Authority confirmed the order of punishment by order dated 10.03.2010.

The further case of the workman is that the service conditions of the employees of party no.1 are governed by various awards like Sastri Award and Desai Award and different bipartite settlements arrived at between the management and the recognized unions and while he was working at Malkapur Branch, he was served with the memo dated 01.08.2002 and he was directed to give his explanation regarding grant of loan to some persons while working at Dongaon branch and he submitted his reply to the memo on 05.08.2002, denying the allegations made in the same and on 07.07.2003, he was served with a letter, whereby, he was debarred from in cadre and out cadre promotions for a period of three years and he was also intimated that in view of his denial of the charges levelled against him, it was decided to conduct a enquiry against him and the punishment imposed against him of debarring him from promotion was without conducting any enquiry into the matter and to his surprise, he was served with the charge sheet dated 30.08.2003 under clauses (d), (e), (j) and (k) of the settlement dated 10.04.2002, on the allegations of his committing gross misconduct by demanding illegal gratification of an amount of Rs. 2500/- from the concerned persons for getting loan sanctioned and the charges levelled against him were vague and many of them were not proper and prior to initiation of the departmental enquiry, vigilance department conducted preliminary enquiry, communication of which was never supplied to him and he submitted his reply on 26.09.2003,

denying the charges and alongwith the charge sheet, he was not served with the list of witnesses to be examined in the enquiry and the documents basing on which the charge sheet was submitted against him were not supplied to him and party no.1 appointed Shri Palsepure and Shri G.L. Ganras as the enquiry officer and presenting officer respectively to conduct the enquiry against him and he made oral request to allow him to engage a lawyer for his defence, but his request was denied and he was directed to bring his representative to defend his case during the enquiry and as such, he was denied fair and proper opportunity to defend himself in the enquiry and such denial was against the principles of natural justice and on this count alone, the enquiry can be said to be vitiated.

It is further pleaded by the workman that he appointed Shri S.T. Gulgulwar, the President of the State Bank of India Staff Union at the relevant time as his defence representative and out of the list of witnesses supplied during the enquiry two witnesses were only examined by the management and the said witnessed were cross-examined by his defence representative and the enquiry against him was completed in two sittings without giving him any opportunity to bring his witnesses and the party no.1 initiated and completed the enquiry hurriedly, without following the principles of natural justice and though the second show cause notice was received by him on 17.02.2006, he was not supplied with the copy of the report submitted by the enquiry officer along with the said show cause notice and therefore, he sent a letter on 09.03.2006 to the party no.1 demanding a copy of the enquiry report and the action of party no.1 in not supplying the copy of the enquiry report and only issuing show cause notice proposing punishment of discharge from service itself is illegal and arbitrary and upon receipt of the letter issued by him, the party no.1 supplied the copy of the enquiry report dated 13.03.2004 and the detailed explanation dated 27.11.2003 submitted by him was not considered by the enquiry officer while submitting his report and basing on such a report, the punishment of discharge from service was inflicted and while conducting the enquiry, the enquiry officer did not conduct the enquiry as per the procedure prescribed in the standing orders and while inflicting the punishment, the disciplinary authority did not consider his past clean and excellent service record and the punishment imposed against him is shockingly disproportionate to the charges levelled against him.

The workman has further pleaded that he preferred an appeal dated 29.05.2006 before the appellate authority and his appeal was rejected on 10.03.2010 by the appellate authority and from the date of his discharge from service, he is out of job and he is entitled for reinstatement in service with continuity and full back wages.

3. The party no.1 in the written statement has pleaded inter-alia that the workman was appointed as a clerk-cum-typist on 27.09.1991 and was posted at Dongaon Branch

and in due course of time, he was promoted as an Assistant and there were complaints against the workman by some borrowers, of demanding and accepting illegal gratification in dealing with loan applications and as number of irregularities were noticed in processing the loan proposals, in the interest of the workman, the bank and the customers, the workman was transferred to Malkapur Branch and a memo dated 01.08.2002 was issued to the workman calling for his explanation to various omissions and commissions committed by him while working at Dongaon Branch and the workman submitted his explanation dated 05.08.2002, denying the allegations made in the memo and as it was not satisfied with the explanation submitted by the workman, decided to hold the enquiry and accordingly issued charge sheet dated 22.08.2003 against the workman (wrongly mentioned as charge sheet dated 22.08.2002 in paragraph 2.3 at page 3 of the written statement by party no.1) and appointed the enquiry officer to enquire into the misconduct as mentioned in the charge sheet and the enquiry commenced on 08.10.2003 and concluded on 31.10.2003 and the management examined two witnesses and produced number of documents in support of its case and the witnesses were cross-examined by the experienced and competent defence representative and all relevant documents relied on by the Bank were supplied to the workman during the enquiry and the workman never complained of non-receipt of the documents or of not following the principles of natural justice and the parties submitted written notes of argument in support of their respective case, to the enquiry officer and the enquiry officer submitted his report dated 13.03.2004 holding only charge no.2 to have been proved against the workman and the disciplinary officer accepted the said report independently and issued the show cause notice dated 11.02.2006 to the workman for proposed punishment of discharge with superannuation benefits and the workman was given personal hearing on 23.03.2006 and was heard in length by the disciplinary authority on the point of punishment and the disciplinary authority duly considered the enquiry report and examined the entire matter independently and passed the final order of punishment of "discharge with superannuation benefits (pension/provident fund and gratuity) on 26.05.2006 and the appeal dated 29.05.2006 preferred by the workman against the order of punishment was dismissed by the Appellate Authority after due consideration of the facts and circumstances of the case and the grounds of appeal, on 10.03.2010.

It is also pleaded by the party no.1 that the workman was governed by Sastry Award, Desai Award and various Bipartite Settlement and not by any other Act and the request of the workman for engagement of lawyer in the enquiry was rightly rejected by the enquiry officer and permission to grant the assistance of lawyer is the discretion the disciplinary authority and when the

presenting officer is not technically qualified person, the services of lawyer to the charge sheeted employee is not necessary to be provided and the workman had neither made any request to examine any witness nor produced any witness during the enquiry and the allegations have been made with ulterior motive by the workman to suit his purpose and the enquiry was conducted by giving all reasonable opportunities to the workman and the punishment is not shockingly disproportionate and the workman is not entitled to any relief.

4. As this is a case of discharge of the workman from service after holding a departmental enquiry, the fairness or other wise of the departmental enquiry was taken as a preliminary issue for consideration and by order dated 14.07.2014, the departmental enquiry conducted against the workman as legal, proper and in accordance with the principles of natural justice.

5. At the time of argument, it was submitted by the learned advocate for the workman that the preliminary issue regarding the fairness of the enquiry has been answered against the workman and so far the issue of perversity of the findings of the Enquiry Officer is concerned, it can be found that the findings are one sided and the Enquiry Officer did not consider the evidence adduced by the workman in the enquiry and the workman was not supplied with the copy of the enquiry report and vigilance department had made enquiry in the matter, prior to the submission of the charge sheet against the workman and copy of the enquiry report of the vigilance department was not given to the workman and out of the witnesses examined by the management in the enquiry, one witness deposed that the complaint made against the workman was a false complaint, but the Enquiry Officer did not consider the said evidence at the time of giving of his findings and as such, the findings of the Enquiry Officer are perverse and his clean and unblemished past service record of 15 years was not considered by the Disciplinary Authority before inflicting the punishment of dismissal from service and one of the complainants, Shri Landge withdrew his complaint stating the same to be a fake complaint and such fact was placed before the Enquiry Officer and the Disciplinary Authority, but the same was not considered by the said authorities and the punishment awarded against the workman is shockingly disproportionate and as the charge sheet was submitted and the enquiry was conducted against the workman on the basis of fake complaints, the punishment imposed against the workman is liable to be set aside and the workman is entitled for reinstatement in service with continuity and full back wages.

6. Per contra, it was submitted by the learned advocate for the party no.1 that the issue of fairness of the departmental enquiry has been answered in favour of the party No.1 by order dated 14.07.2014 and so far the issue

of perversity of the findings is concerned, in the entire statement of claim, there is no allegation or whisper about the perversity of the findings or as to how they are perverse and the documents, evidence and materials on record of the enquiry clearly prove that the findings are based on the evidence on record and it is well settled that where the Tribunal does not find any fault with the proceedings conducted by the enquiring authority, it does not have any jurisdiction to re-appreciate the evidence and set aside the order of the Disciplinary Authority on the ground of insufficient evidence to prove the charges and Tribunal cannot sit on appeal over the findings of the Disciplinary Authority and the workman was charged for illegal gratification etc., which are serious in nature and as such the punishment is just and proper and as per law and Rules applicable to the workman and the workman was not dismissed, but he was discharged and was entitled to all most all terminal benefits and the punishment is not harsh or shockingly disproportionate and in the entire statement of claim, only at one place, it has been mentioned that the punishment is shockingly disproportionate, but no reason has been mentioned for coming to the said conclusion and looking to the nature of the charge, the punishment imposed against the workman is very meager and as such, there is no scope to interfere with the punishment.

In support of the submissions, the learned advocate for the party No.1 has placed reliance on the decisions reported in 1995 SCC-292 (Government of Tamilnadu Vs. Rajapandian), 2005 SCC (L&S)-417 (M.P.Elec. Board Vs. Jagdish Chandra Sharma), 2005 SCC (L&S)-567 (Damoh Panna Sagar Rural Regional Bank Vs. Munnalal Jain), 1993 LIC-1897(AP) (S. Narasimha Vs. Personnel Manager, Syndicate Bank), 2005 SCC(L&S)-407 (Divisional Controller Vs. A.T. Mane), (2010) 2 SCC(L&S)-239 (UPSRTC Vs. Suresh Chand), 2003 SCC (L&S) -468 (CMD U Co. Bank Vs. P.C.Kakkar), 2006 SCC (L&S) -265 (TNCS Corporation Vs. K. Meerabai), 2006 SCC(L&S)-133 (Hombe Gowda Edu. Trust Vs. State of Karnatak) and Air 1989 SC-1185 (Union of India Vs. Paramanand)

7. At the outset, it is to be mentioned that so far the contentions made by the learned advocate for the workman regarding the non supply of document to the workman is concerned, the same had been dealt with at the time of deciding the preliminary issue of fairness of the departmental enquiry and as such, there is no scope of reconsideration of the same. It is also, clear from the evidence of the workman himself that he had received the second show cause notice on 17.02.2006 and copy of the inquiry report on 07.03.2006 and submitted his reply to the second show cause notice on 23.03.2006. So, there is no force in the contention raised by the learned advocate for the workman that the workman as not supplied with the copy of the enquiry report.

8. In view of the submissions made by the learned advocates for the parties, before delving into the merit of the matter, I think it necessary to mention the principles envisaged in the judgments cited by the learned advocate for the party No.1.

It is found from the decisions cited by the learned advocate for the party No.1 that the Hon'ble Apex Court have held that:-

“Disciplinary Enquiry:- Finding of fact- Interference- Permissible only when there is no material for the said conclusion: or that on the materials, the conclusion cannot be that of a reasonable man. Enquiry Officer dealing with Articles of charge chronologically and relevant materials on basis of which ultimate conclusion is arrived at. Findings of enquiry officer cannot be held to be findings base on no evidence. Bias of enquiry officer also not made out – Enquiry cannot be held to be vitiated.”

“A finding recorded in a domestic enquiry cannot be characterized as perverse by the Labour Court unless it can be shown that such a finding is not supported by any evidence, or is entirely opposed to the whole body of evidence adduced. In a domestic enquiry once a conclusion is deducted from the evidence, it is not permissible to assail the conclusion even though, it is possible for some other authority to arrive at a different conclusion on the same evidence.”

“A disciplinary proceeding is not a criminal trial. The Standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt.

xxx xxx xxx xxx

Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 to review the materials. If the enquiry has been properly held, the question of adequacy or reliability of evidence cannot be canvassed before the High Court.”

xxx xxx xxx xxx

The jurisdiction of the Tribunal to interfere with the disciplinary matters for punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the enquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an act of Legislature or rules made under the proviso of Article 309 or the Constitution. If there has been an enquiry consistent with the rules and

in accordance with the principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can be lawfully imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority.

9. Now, the present case in hand is to be judged with the touch stone of the principles enunciated by the Hon'ble Apex Court as mentioned above.

10. On perusal of the record, it is found that the findings of the Enquiry Officer are based on the evidence on record of the departmental enquiry. The Enquiry Officer has analyzed the evidence on the record of the departmental enquiry in a rational manner and has assigned reasons in support of his findings. It is also found that the findings of the Enquiry Officer are not as such, which cannot be arrived at by a reasonable man on the materials on record of the departmental enquiry. It is not a case of total absence of evidence on record of the enquiry or that the findings of the Enquiry Officer are totally against the evidence on record. Hence, the findings of the Enquiry Officer cannot be said to be perverse.

11. So far the question of proportionality of the punishment is concerned, it is found that grave misconduct of receipt of illegal gratification, willful damage or attempt to cause damage to the property of the bank or any of its customers, willful in subordination and doing an act prejudicial to the interest of the Bank have been proved against the workman in a properly conducted departmental enquiry. It is well settled by the Hon'ble Apex Court in a number of decisions that in case of proved misconducts of serious nature, there is no question of considering past service record. It is the discretion of the employer to consider the same in appropriate cases, but Labour Court cannot substitute the penalty imposed by the employer. A bank employee has to exercise a higher degree of honesty and integrity. Contention that the complainant withdrew his grievance would not condone the misconduct. Hence, the punishment of discharge from service with superannuation benefits imposed against the workman cannot be said to be shockingly disproportionate. From the facts and circumstances of the case, it is found that there is no scope to interfere with the punishment imposed against the workman. Hence, it is ordered:-

ORDER

The action of the management of State Bank of India, Nagpur in imposing the penalty of discharge from service with superannuation benefits on Shri Prakash Nathuji Hedau vide their order dated 26.05.2006 is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 23 फरवरी, 2015

का.आ. 387.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 10/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/02/2015 को प्राप्त हुआ था।

[सं. एल-41011/48/2014-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 23rd February, 2015

S.O. 387.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the management of Central Railway and their workmen, received by the Central Government on 23/02/2015.

[No. L-41011/48/2014-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

**BEFORE SHRI J.P.CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/10/2014

Date: 03.02.2015

- Party No.1 (a)** : The Divisional Railway Manager,
Central Railway, Nagpur Division,
Kings Way, Station Road
Nagpur (M.S.)- 440001.
- (b)** : The Sr. Divisional Commercial
Manager, Central Railway,
Kingsway, Nagpur- 440001.
- (c)** : The Sr. Divisional Personnel
Officer, Central Railway,
Kingsway, Nagpur- 440001.

Versus

- Party No. 2** : The General Secretary,
Parcel Porter Sanghatana,
New Mankpur, Plot No.37,
Mhada Colony ke pas,
Nagpur- 440030.

ORDER

(Dated: 3rd January, 2015)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial

dispute between the employers, in relation to the management of Central Railway and their union, for adjudication, as per letter No.L-41011/48/2014-IR (B-I) dated 27.05.2014, with the following schedule:-

"Whether the action of the management of Central Railway, Nagpur in denying the claim of Smt. Prabhabai W/o Late Mohanlal Laloo for compassionate appointment and compassionate allowance in lieu of death of her husband late Mohanlal Laloo is just, fair and legal? If not, to what relief the concerned dependent of deceased workman is entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the union, "Parcel Porter Sanghatana", ("the union" in short) filed the statement of claim. However, the management of Central Railway, ("party no.1" in short) filed an application for dismissal of the reference on the ground of this Tribunal having no jurisdiction to adjudicate the dispute.

3. This order arises out of the application dated 29.10.2014 filed by the management of Central Railway, Nagpur Division for dismissal of the reference, on the ground of this Tribunal having no jurisdiction to adjudicate the dispute, in view of the bar created by the Administrative Tribunals Act, 1985.

4. The case of the management is that the union has raised the present dispute on behalf of the deceased workman, Mohanlal Laloo, Ex LPP, Wardha, who was removed from service by following proper Dar proceeding, vide order dated 30.07.2001 and after the enactment of Administrative Tribunals Act, 1985 and the constitution of the Central Administrative Tribunal to adjudicate the dispute relating to service condition of the central government servants, the Central Administrative Tribunal is only empowered to decide the dispute as raised by the union and according to section 14 of the Administrative Tribunals Act, 1985, all service matters pertaining to the Central Government are to be adjudicated by the Central Administrative Tribunal and section 28 of the said Act provides that, "On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any service or persons appointed to any service or post, no court except the (a) the Supreme court, (b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 (14 of 1947) or any other corresponding law or the time being in force, shall have, or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters." and the expression "service matter" occurring both in sections

14 and 28 has been defined in clause “q” of section 3, which says that “service matters” in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation or society owned or controlled by the Government, in respect of -

- (i) Remuneration (including allowances), pension and other retirement benefits;
- (ii)
- (iii)
- (iv)
- (v) Any other matter whatsoever;

And it is clear from the aforesaid provisions of the Administrative Tribunals Act, 1985 that it is the Central Administrative Tribunal, which has the jurisdiction, power and authority to adjudicate the dispute and this Tribunal is lack of jurisdiction to decide the issue and in the present reference, the union has made prayer to set aside the impugned order of punishment of removal from service passed against the deceased employee and to treat his death as death in harness and to grant benefit of family pension and appointment on compassionate ground and the grievance of the applicant being the service matter, the same can be challenged before the Central Administrative Tribunal and as such, the reference is liable to be dismissed, the same being bad in law.

5. The Union has resisted the application by filing its objection and stating therein that it is a registered trade union under the Trade Unions Act and it has every right to raise the dispute under section 2(A) of the Industrial Disputes Act, 1947 and the DAR proceeding initiated against the deceased workman was unlawful and this is a dispute between the employer and employee and hence an industrial dispute and is within the purview of the Industrial Tribunal and section 14 of the Administrative Act, 1985 relates to jurisdiction, powers and authority of Administrative Tribunal for recruitment matters and the provisions of section 28 of the Administrative Tribunals Act, 1985 do not preclude the jurisdiction of the Industrial Tribunal and it has raised the dispute under section 2(k) of the Industrial Disputes Act and after failure of the conciliation proceedings, the appropriate Government has referred the dispute to this Tribunal for adjudication under section 10(1) of the Industrial Disputes Act and the Tribunal has to decide the reference within the frame work of the schedule of the reference and therefore, the objection raised by the management is frivolous and liable to be rejected.

6. Perused the record. Considered the submissions made by the learned advocate for the party No.1 and the

union representative for the applicant. It is not disputed that the deceased employee, Mohanlal Laloo was a permanent employee of the Central Railway, Nagpur Division and the dispute raised is in regard to service matters of the concerned deceased employee, a member of any service or person appointed to any service or post with the affairs of the Union (Government).

It is clear from the provisions of sections 14 and 28 read with section 3(q) of the Administrative Act that the Central Administrative Tribunal under the Act is only competent to decide the issue raised by the Union on behalf of the applicant and this Tribunal is precluded from entertaining the reference for adjudication and this Tribunal is not entitled to exercise the jurisdiction, power or authority in relation to such service matters.

ORDER

Hence, the application filed by the management of Central Railway, Nagpur Division is allowed. It is ordered that the reference is not maintainable before this Tribunal on the ground of this Tribunal of not having any jurisdiction, power or authority to decide the dispute. However, the Union is at liberty to approach the appropriate competent forum, i.e. the Central Administrative Tribunal for redress, if it so likes.

Send the soft copy and the hard copy of the order as well to the Central Government for notification in the official gazette.

J. P. CHAND, Presiding Officer

नई दिल्ली, 23 फरवरी, 2015

का.आ. 388.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स गानुन डुंकरली एण्ड कं. लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 02/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/02/2015 को प्राप्त हुआ था।

[सं. एल-41012/170/2005-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 23rd February, 2015

S.O. 388.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 02/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure in the Industrial Dispute between the management of M/s. Gannon Dunkerly and Co. Ltd. and their workmen, received by the Central Government on 23/02/2015.

[No. L-41012/170/2005-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT BHUBANESWAR**

Present : Shri Pradeep Kumar, Presiding Officer,
C.G.I.T.-cum-Labour Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 2/2009

L-41012/170/2005 -IR(B.I), dated 08.12.2008

Date of Passing Award – 27th Day of January, 2015

Between :

1. The General Manager,
M/s. Gannon Dunkerley & Co. Ltd.,
Eros Apartments (7th Floor),
56, Nehru Place, New Delhi-110019
2. The President,
M/s. Gannon Dunkerley & Co. Ltd.,
Chartered Bank Building, M.G. Road,
Fort, Mumbai-400001
3. The Divisional Engg.,
Railway Sleeper Factory,
East Coast Railway, Rayagada,
Odisha
...1st Party Management

(And)

Shri R. Sankar Rao,
Roit Colony (Sastri Nagar),
PO & Dist-Rayagada,
Rayagada, Odisha-765002
...2nd Party Workman

Appearances :

1. None ... For the 1st Party-
Management No. 1, 2 & 3
2. Shri R. Sankar Rao ... For himself the 2nd Party-
Workman

AWARD

The Government of India in the Ministry of Labour & Employment has referred the present dispute existing between the employers in relation to the Management of M/s. Gannon Dunkerley & Co. Ltd., and the East Coast Railway AND their workmen Shri R. Shankar Rao in exercise of the powers conferred under clause (d) of sub-section (1) and sub-section 2(A) of section 10 of the Industrial Disputes Act vide their Letter No. L-41012/170/2005 - IR (B-I), dated 08.12.2008 to this Tribunal for adjudication. The dispute as referred to has been mentioned under the schedule of the letter of reference which is quoted below.

“Whether the management M/s. Gannon Dunkerley & Co. Ltd., Comes under the control of Sleeper Factory, East Coast Railway, Raigada (Orissa) and Railway is the principal employer in this case? If so, is the termination of services of Shri R. Sankar Rao

w.e.f. 1.10.2004 justified? If not, to what relief the applicant is entitled from Railway administration?”

2. The 2nd party workman, Shri R. Sankar Rao (herein after referred to as “the workman” in short) has averred in his statement of claim that M/s. Gannon Dunkerley Co. Ltd., the 1st Party Management No. 1 & 2 (herein after referred to as “the Gannon management” in short) is a manufacturer of Railway Sleeper. The Gannon Management’s factory is established in the premises of the management of East Coast Railway at it’s Rayagada Railway Station (hereinafter referred to as “Railway management” in short). The Railway management have full control of the Gannon management as the latter is functioning under the direct supervision of the former and that the railway sleepers are being done in accordance with the design specification, requirement and material supplied through it’s technical expert. The Gannon management is only a contractor and has no independent authority left with him to modify, amend or redesign the railway sleeper. The balance sheet, profit & loss accounts, payment of wages, bonus, etc., of the employees of the Gannon management are being done strictly under the direction of the Railway management.

3. The workman has further pleaded that his suspension from duty and termination of his employment by the Gannon management is malafide, unjust and illegal. He was not given an opportunity to explain his grievance to the Gannon management. The Gannon management also failed to supply the details of the charges framed against him. The action of the Gannon management being illegal, he became a victim of the said action. Therefore, the workman prays to pass orders for his reinstatement with back wages under the Gannon management declaring the action of the Gannon management as illegal and unjustified and the Railway management may be ordered to pay necessary compensation to him and direct the Gannon management to allow him to continue in his services.

4. The Gannon management on the other hand denied all the averments of the workman as stated in his statement of claim. The Gannon management have contended that they have paid the settled amount of money of Rs. 1,15,000/- (Rupees One Lakh Fifteen Thousands) only towards full and final settlement to the workman as per the settlement arrived at before the conciliation machinery of the Ministry of Labour & Employment, Government. The Gannon management also contended that this Tribunal has no jurisdiction to adjudicate the matter as the Central Government is not the appropriate Government as per the Industrial Disputes Act, 1947. The Gannon management is also stated that the employment or non-employment of the workman is the sole discretion of them and the Railway management has nothing to do with the same as the latter

is no way concerned with the business of the former. Since the matter has already been resolved through settlement before the conciliation machinery, the same is binding upon both the parties and the workman cannot re-agitate by way of reference or otherwise. On earlier occasions, the Government of India in the Ministry of Labour & Employment vide its letter dated 07.01.2008 have declined to refer the matter for adjudication due to reason that the Gannon management is the independent principal employer and the State Government is the appropriate government in respect of them. Accordingly, the Gannon management have prayed to reject the claim of the workman.

5. The Railway management has not taken any step inspite of notices issued to them and remained absent from the proceedings of the matter.

6. The following issues were settled by my predecessor.

- (1) Whether the management M/s. Gannon Dunkerley & Co. Ltd., Comes under the control of Sleeper Factory, East Coast Railway, Raigada (Orissa) and Railway is the principal employer in this case? If so, is the termination of services of Shri R. Sankar Rao w.e.f. 1.10.2004 is justified?
- (2) If not, to what relief the applicant is entitled from Railway administration?

7. The workman examined himself as the workman witness No. 1 and is duly cross examined. He has proved 12(twelve) documents marked as Exhibit 1 to 12. The Gannon management filed affidavit evidence of Shri Dwarka Prasad as the management witness No. 1. Since, the Gannon management remained absent from the proceedings on subsequent dates, his witness could not be cross examined. The Gannon management as well as the Railway management remained absent without taking any steps for which I have heard the oral arguments from the side of the workman. I have perused the record.

FINDINGS

Issue No. 1

8. It is an admitted fact that M/s. Gannon Dunkerley Co. Ltd., is registered under the Factories Act and hence an independent principal employer. The State Government is the appropriate Government in respect of the Gannon management. The Gannon management undertake the jobs for which it is established and recruits its own manpower to undertake its works. In the present dispute, the Gannon management was doing the work of manufacturing railway sleepers as per the specifications given by the Railway authority for the use of Railway

only. But, the Railway management has no control over the Gannon management. The various service conditions of the Gannon management are not governed by the Railway management. Therefore, the Railway management cannot be treated as the Principal Employer in respect of the disputant workman. The workman also in his cross examination on 22.3.2012 has admitted that he has no claim from the Railway management. Thus, the Railway management is no way concerned in the present matter. Therefore, the termination of the workman with effect from 01.10.2004 is done by the Gannon management only and as because the Central Government is not the appropriate Government in respect of the Gannon management, it cannot refer the matter of termination of the workman for adjudication to decide its justification. Thus, issue No. 1 is answered against the workman.

Issue No. 2.

9. In view of the above facts, the applicant is not entitled for any relief from the Railway administration. However, since the applicant has rendered a much longer period of service under the Gannon management without any complaint or disturbance except his unwillingness for his transfer to some other establishment, his case should be considered for giving him one more chance by the Gannon management by reinstating him into his services to prove himself.

10. The reference is answered accordingly.

PRADEEP KUMAR, Presiding Officer

नई दिल्ली, 23 फरवरी, 2015

का.आ. 389.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रेलवे विकास निगम लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 41/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/02/2015 को प्राप्त हुआ था।

[सं. एल-41011/21/2007-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 23rd February, 2015

S.O. 389.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 41/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure in the Industrial Dispute between the management of Railway Vikash Nigam Ltd. and their workmen, received by the Central Government on 23/02/2015.

[No. L-41011/21/2007-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT BHUBANESWAR**

Present : Shri Pradeep Kumar, Presiding Officer,
C.G.I.T.-cum-Labour Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 41/2007

L-41011/21/2007 -IR(B.I), dated 16.11.2007

Date of Passing Award – 11th day of December, 2014

Between:

1. M/s. HCIL-Adhikarya-ARSS(JV),
HIG-46, BDA Enclave, G.M. Marg,
Jaydev Bihar, Bhubaneswar,
Odisha ...1st Party-Management
2. The Chief Personnel Manager,
Railway Vikash Nigam Ltd.,
Metro House, Saheed Nagar,
Bhubaneswar, Odisha

(And)

The General Secretary,
Orissa Nirman Mazdoor Sabha,
VA, 8/1, Unit-2, Bhubaneswar,
Odisha ...2nd Party-Union.

Appearances:

1. None ... For the 1st Party-
Management No.1
2. None ... For the 1st Party-
Management No.2
3. Shri Prahalada Pradhan ... For the 2nd Party-
Union

AWARD

The Government of India in the Ministry of Labour & Employment has referred the present dispute existing between the employers in relation to the Management of M/s. HCIL-Adhikarya-ARSS(JV), Bhubaneswar and the Chief General Manager, Railway Vikash Nigam Ltd., Bhubaneswar and their workman represented through the General Secretary, Orissa Nirman Mazdoor Sabha, Bhubaneswar in exercise of the powers conferred under clause (d) of sub-section (1) and sub-section 2(A) of section 10 of the Industrial Disputes Act, 1947 vide their Letter No. L-41011/21/2007 -IR(B.I), dated 16.11.2007 to this Tribunal for adjudication. The dispute as referred to has been mentioned under the schedule of the letter of reference which is quoted below.

“Whether the action of the management of M/s. HCIL-Adhikarya-ARSS(JV) by terminating the services of Shri Prahallad Pradhan & 4 others, is

legal and justified? If not, to what relief the workers are entitled?”

2. The 2nd party union (herein after referred to as “the 2nd party”) has filed his Statement of Claim and rejoinder detailing therewith the modes of termination of the services of S/Shri Prahallad Pradhan, Nrusinghanath Moharana, Mirza Mehbub Beg, Dharani Rout and Subas Chandra Das (in short “workmen”). The workmen were the members of the 2nd party. The workmen were amongst the workers (about 108 in numbers) working under the 1st party Management of M/s. HCIL-Adhikarya-ARSS(JV) (herein after referred to as “the 1st party No. 1”) who was a contractor under the 1st party Management of the Chief Personnel Manager, Railway Vikash Nigam Ltd, Bhubaneswar (herein after referred to as “the 1st party No. 2”). The 1st party No. 2 is a Public Sector Undertaking functioning under the Government of India. The workmen were engaged by the 1st party No. 2 for construction of railway bridges, track and other construction work for the Railway Vikash Nigam Ltd. The 1st party No. 2 is the principal employer for the purpose of this dispute.

3. The workers were engaged by the 1st party No. 1 for more than 12 hours a day. The workers are also not provided with any safety materials for their safety at the work place. The workers were not being paid any overtime wages as well as they were paid less wages compared to work performed by them. The workers were working at the Kathojodi site of Gopalpur in Cuttack. Against the above irregularities of the 1st party No.1, the disputant workmen raised their voice through their union. Aggrieved with the same, the 1st party No. 1 terminated the services of the disputant workmen illegally without following the principles of natural justice.

4. Upon aggrieved with the action of the 1st party No.1, the 2nd party raised an industrial dispute before the Regional Labour Commissioner (Central), Bhubaneswar for an amicable resolve of their dispute. Though, several dates were fixed for conciliation, the 1st party No. 1 did not turn up. Hence, the conciliation ended in failure which resulted in the present reference. The 2nd party examined one Shri Nrusinghnath Moharana (one disputant workman) at it's witness and exhibited 08 documents and prayed for their reinstatement in the project work with all consequential benefits from the date of their termination from services till the completion of the project work by the 1st party No. 1 under the 1st party No. 2..

5. The 1st Party Nos. 1 and 2 though appeared on a few dates to conduct the case on their behalf, yet did not prosecute the matter properly. As a matter, the 1st party No. 2 was set exparte on 19.01.2009. The 1st party No. 1 also set exparte on 31.03.2011. But, inspite of the same, both the managements were given ample opportunities to proceed with the case. Several notices were also

issued to them for their appearance and for further orders. But, they did not turn up. It seems, both the managements have no interest in the case and they did not comply the orders of the Tribunal.

6. The following issues are framed by my predecessor:

- (a) Whether the reference is maintainable.
- (b) Whether the termination of workmen amounts to retrenchment.
- (c) Whether the termination of workman is justified or not.
- (d) If not, what relief the workman is entitled to.

7. I have heard oral arguments from the side of the 2nd party only as the 1st parties are absent. I have also perused the record.

FINDINGS

Issue No. 1

8. The 1st party No.2 is a public section undertaking under the control of the Government of India engaged with the development of railway infrastructure in India. The 1st party No. 1 is a multinational company engaged as a contractor for a project work entrusted to it by the 1st party No. 2. The disputant workmen were employed in the 1st party No. 1 to carry out various construction works. A total of about 108 workers were working with the 1st party No. 1. The 5(five) numbers disputant workers were amongst the 108 workers. There existed employer and employee relationship between the 1st party No. 1 & 2 and the disputant workmen.

9. Upon aggrieved with the action of the 1st party No. 1, the disputant workers raised an industrial dispute through their union before the Regional Labour Commissioner (central), Bhubaneswar to have their matter redressed. But, due to failure of the conciliation proceedings, the matter was referred by the conciliation machinery to the appropriate government for necessary action and hence this reference. In view of the above facts, the reference is maintainable. This issue is answered accordingly.

Issue No. 2

10. While terminating the services of the disputant workers, the 1st party No. 1 should have complied Section 25F, 25G or 25N of the Industrial Disputes Act, 1947. But, without complying any of the above Sections, the 1st party No. 1 has terminated the services of the disputant workmen which clearly amounts to retrenchment under the Act. This issue is answered accordingly against the 1st party management No. 1.

Issue No. 3

11. As is seen from the record and the oral arguments submitted by the 2nd party, no disciplinary proceedings

were conducted against the disputant workers except a fact finding enquiry. On the report of the fact finding enquiry, the services of the disputant workers were terminated which is not justified under the eye of law and clearly violates the principles of natural justice. The action of the 1st party No. 1 is thus arbitrary, illegal and the colourable exercise exercise of employer's rights. Hence, the action taken by the 1st party No. 1 in terminating the services of the disputant workmen is not justified. This issue is answered accordingly against the 1st party management No. 1.

12. The 1st party No. 2 (Railway Vikash Nigam Ltd.) was required to ensure the maintenance of various records pertaining to attendance register of the employees, register for payment of minimum wages as well as overtime allowance to the employees, by the 1st party party No. 1. It must have watched and guided for taking proper safety measures by the 1st party No.1 while engaging workers to work on sites. Also, the 1st party No. 2 should take care of maintenance of industrial peace and harmony in the establishments set up under its control. But, it seems the 1st party No. 2 by have not taken all such steps thereby violated the principles enumerated under the ID Act, 1947.

Issue No. 4.

13. It is therefore ordered that the 1st party management No. 1 should reinstate the disputant workers (5 numbers) as stated above, back into their services with all consequential benefits till the date of implementation of award. It is further ordered that, if the concerned project of the 1st party No. 1 under the 1st party No. 2 is already complete then the 1st party No. 1 will have to pay the all financial benefits concerning monthly wages etc., to the disputant workers from the date of their termination till the existent of the project work of the 1st party No. 1 in the 1st party No. 2. The financial benefits are to be paid to the disputant workmen within a period of three months from the date of publication award in the Gazette of India failing which the 1st party No. 1 shall pay interest @ 12% per annum simple interest to the disputant workmen. The 1st party No. 2 is directed to take all steps for proper compliance of the above orders.

14. The award is passed exparte against the 1st party management No. 1 and 2. The reference is answered accordingly.

PRADEEP KUMAR, Presiding Officer

नई दिल्ली, 23 फरवरी, 2015

का.आ. 390.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय रिज़र्व बैंक के प्रबंधन के संबंध निर्योजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 1/2013)

को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/02/2015 को प्राप्त हुआ था।

[सं. एल-12025/01/2015-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 23rd February, 2015

S.O. 390.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the management of Reserve Bank of India and their workmen, received by the Central Government on 23/02/2015.

[No. L-12025/01/2015-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

**BEFORE SHRI J. P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/Application/1/2013

Date: 9.12.2014

Applicant : Reserve Bank Employees
Association, Nagpur
Through its Assistant Secretary,
34, Malviya Nagar, Khamla, Nagpur

Versus

Party No.2 : Reserve Bank of India, Mumbai,
Through its Chief General Manager,
Human Resources,
Reserve Bank of India,
Central Office,
20th & 21st Floor,
Central Office Building,
Mumbai

AWARD

(Dated: 9th December, 2014)

This is an application under section 33-A of the Industrial Disputes Act, 1947 ("the act" in short) by the union, " Reserve Bank Employees Association" ("the union" in short), challenging the action of the opposite party, Reserve Bank of India ("the opposite party" in short), for entering into the settlement dated 21.03.2013 with the union," All India Reserve Bank Employees Association ("the AIRBEA" in short), regarding the scheme of promotion of class III employees to the post of Assistant Manager in grade – 'A'.

2. The case of the applicant as presented in the application is that the opposite party signed a private

settlement with the AIRBEA on 21.03.2013 regarding the scheme of promotion of class III employees to the post of Assistant Manager in Grade-A, making drastic changes in the service conditions of the employees, flowing from the settlements dated 23.06.2005 and 18.08.2011, which were pending subject matter of adjudication before this Tribunal, but no express permission of the Tribunal was obtained by the opposite Party, before entering into the said settlement or making the changes in the service conditions of the employees.

The union has prayed to decide the complaint and to pass appropriate order.

3. The opposite party in its written settlement has pleaded inter-alia that it had not contravened the provisions of section 33 or any other provision of the Act as alleged in the complaint and as such, taking of permission from the Tribunal does not arise and the union is a minority union having only 307 members belonging to Class III employees on All India basis and the demands of the union were fully considered while negotiating and arriving at a settlement on 23.06.2005 with the majority recognized union, the AIRBEA and AIRBEA is the recognized majority union of class III employees and the memorandum of settlement dated 18.08.2011 was valid for two years i.e. panel year 2011 and 2012, after which a new scheme was to be put in its place by mutual consent, as mentioned in clause 11 of the said settlement and accordingly, the memorandum of settlement dated 21.03.2013 on the new scheme of promotion of the class III employees to the post of assistant Manager was signed by it with AIRBEA and therefore, the complaint filed by the applicant is liable to be rejected.

4. No rejoinder has been filed by the applicant.

5. Besides placing reliance on documentary evidence, both the parties have led oral evidence in support of their respective claim. Shri Nityanand S. Sahasrabudhe has been examined as a witness on behalf of the applicant, whereas, one Shri R. Srinivasa Rao has been examined as a witness by the opposite party.

6. The witness for the applicant in his evidence on affidavit has stated that the opposite party contravened the provisions of section 33 of the Act and the matter of promotion of class III employees to the post of Assistant Manager Grade-A arising out of the settlement dated 23.06.2005 and 18.08.2011 signed by the opposite party was pending for adjudication before this Tribunal in case no. CGIT/NGP/06/2012 and during pending of adjudication of the said industrial dispute, the opposite party entered into a private settlement with AIRBEA on 21.03.2013 in the matter of promotion of class III employees to the post of Assistant Manager Grade-A, making drastic changes in the service conditions of the employees and the opposite party did not obtain express permission of the Tribunal before signing the settlement dated 21.03.2013

and the action of the opposite party is arbitrary and illegal and in total contravention of the provisions of section 33 of the Act.

In his cross-examination, this witness has admitted that the union is a minority union and AIRBEA is the recognized majority union and in the code of discipline, 1966, it was agreed by the Bank management, Government of India and the unions to accept the code of Discipline. The witness has denied the suggestion that there was no drastic change in the settlement dated 21.03.2013 than the settlements dated 23.06.2005 and 18.08.2011.

7. In his evidence on affidavit, the witness for the opposite party has reiterated the facts mentioned in the written statement. In the cross-examination, the witness has admitted that CGIT/NGP/6/2012 was pending on 21.03.2013 before the Tribunal being referred by the Central Government, which was in respect of promotion of Class-III employees to officer grade-A in accordance with the settlements dated 23.06.2005 and 18.08.2011 and the opposite party entered into an agreement with AIRBEA on 21.03.2013 on the scheme of promotion of class-III employees to the post of Assistant Managers in Grade-A, during the pendency of CGIT/NGP/6/2012 and management had not sought for any permission from the Tribunal to enter into the said settlement.

8. At the time of argument, it was submitted by the Learned Advocate for the union that the union had challenged the settlements entered into by the opposite party with AIRBEA dated 23.06.2005 and 18.08.2001 regarding promotion of class-III employees to the post of A.M. Grade in reference No. CGIT/NGP/6/2012 and while the said reference was pending before this Tribunal for adjudication on 21.03.2013, the opposite party entered into another agreement in respect of the scheme of promotion of class-III employees to the post of Assistant Manager, Grade-A and by such agreement, drastic changes in the service conditions of the employees were made by the opposite party and the pattern of examination has been changed drastically by the settlement dated 21.03.2013, which is against the interest of the employees and the changes in the service conditions of the employees were made by the opposite party without the express permission of the Tribunal during the pendency of the reference CGIT/NGP/6/2012, in contravention of the provisions of section 33 of the Act and the witness examined by the opposite party in his cross-examination has admitted such facts and therefore, necessary orders are required to be passed in the matter against the opposite party.

9. Per contra, it was submitted by the representative for the opposite party that the opposite party has not contravened the provisions of section 33(1) of the Act and the settlement dated 18.08.2011 signed by the opposite party with AIRBEA was valid for two years i.e. panel year 2011 and 2012, after which a new scheme was to be put in

place by mutual consultation, as per clause II of the said settlement and accordingly, there was a settlement between the opposite party and AIRBEA on 21.03.2013 on the new scheme of promotion of class-III employees to the post of Assistant Manager and in the said settlement some changes were made to the pattern of the examination for such promotion and the said changes do not amount to change of service condition of the employees concerned or prejudicial to the interest of the employees and it is well settled by the Hon'ble Apex court that a rule which affects the promotion of a person relates to his condition of service but the mere chance of promotion is not a change in service condition and as there was no change of any service condition of the employees concerned in the settlement dated 21.03.2013, there was no need to take the express written permission of the Tribunal and as there was no contravention of section 33 (1) (a) of the Act by the opposite party, the application filed under section 33 of the Act is not maintainable and liable to be rejected.

In support of such submission, the representative for the opposite party placed reliance on the decisions reported in AIR 1977 SC-1229 (The Bhavnagar Municipality Vs. Ali Bhai Karim bhai), AIR 1981 SC-1699 (Reserve Bank of India Vs. C.T. Dighe), AIR 1974 SC-1631 (Mohammad Shujat Ali Vs. Union of India and 2010 (2) ILR-Cut-798 (Achyutacharan Panda Vs. The Managing Director, Paradeep Phosphates Ltd.)

10. As this is an application under section 33-A of the Act, for contravention of the provisions of section 33 (1) of the Act, for better appreciation of the matter, I think it proper to mention the provision of section 33(1) of the Act.

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before (an arbitrator or) a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employee shall-

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workman concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connect with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute,

Save with the express permission in writing of the authority before which the proceeding is pending.

11. In this case, it is the admitted case of the parties that during pendency of reference case No. CGIT/NGP/12/2012

before this Tribunal, regarding the scheme of promotion of class-III employees to the post of Assistant Manager as per terms of settlement dated 23.06.2005 and 18.08.2011, the opposite party entered into another agreement dated 21.03.2013 with AIRBEA regarding the scheme of promotion of the class-III employees to the post of Assistant Manager and for that the express written permission of the Tribunal was not obtained.

12 The question arises for consideration in this case is as to whether the opposite party contravened section 33 (1) (a) of the Act by entering into the agreement with AIRBEA on 21.03.2013.

It is well settled that a complaint under section 33A of the Act is maintainable only if the employer contravenes section 33 of the Act and in order to attract section 33 (1) (a) of the Act the following features must be present.

- i) There is a proceeding in respect of an industrial dispute pending before the Tribunal.
- ii) Conditions of service of the workmen applicable immediately before the commencement of the Tribunal proceeding are altered.
- iii) The alteration of the conditions of service is in regard to a matter connected with the pending industrial dispute.
- iv) The workmen whose conditions of service are altered are concerned in the pending industrial dispute.
- v) The alteration of the conditions of service is to be prejudice of the workmen

12. Before delving into the merit of the matter, I think it necessary to mention the principles enunciated by the Hon'ble Apex Court in the decision reported in AIR 1981 SC-1699 (Supra). In the said decision, the Hon'ble Apex Court have held that:

Labour and Industrial- Condition of service- Section 33-A of Industrial Disputes Act, 1947- Whether changes made in circular 6 by appellant amounted to change in working conditions of respondents – Application under section 33-A against circular 6 to challenge it on ground that it was introduced when employees belonging to clerical grade and their names were already in panel remained to be promoted was rejected- It was competent for appellant bank to introduce combined promotional schemes for clerical staffs and stenographers-it was all part of incidence of service and in law no grievance can be made against it-changes made in circular 6 do not amount to changes in conditions of services.

13. Applying the principles enunciated by the Hon'ble Apex Court as mentioned above to the present case in hand, it is found that entering into the settlement dated

21.03.2013 by the opposite party with AIRBEA on the scheme of promotion of class-III employees to the post of Assistant Manager does not amount to change of service condition of the workman. The changes made by such agreement in the pattern of the examination relate to the chance of promotion of the workmen only and does not affect the promotion of the workmen. From the materials on record, it is found that there is no merit in the complaint filed by the union. Hence, it is ordered:

ORDER

The application filed by the union under section 33-A of the Act is rejected being devoid of merit.

J. P. CHAND, Presiding Officer

नई दिल्ली, 23 फरवरी, 2015

का.आ. 391.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 53/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19/02/2015 को प्राप्त हुआ था।

[सं. एल-20012/33/2004-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 23rd February, 2015

S.O. 391.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 53/2004) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 19/02/2015.

[No. L-20012/33/2004-IR(C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of
I.D. Act, 1947

Reference No. 53 of 2004

Parties:-

Employer in relation to the management of
Lodna Area of M/S BCCL.

AND

Their workman

Present:- Sri R.K.Saran, Presiding Officer

Appearance:-

For the employers : Shree D.K.Verma, Advocate
 For the Workman : Shree R.R. Ram, Rep.
 State : Jharkhand Industry : Coal

Dated 20/01/2015

AWARD

By order No. L-20012/33/2004- IR(C-I) dated 8/16.06.2004 the Central Government in the Ministry of Labour has, in exercise of power conferred by clause (d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Lodna Coke Plant in not providing employment to Shri Raj Kumar Paswan, in place of his father Shri Sarjoo, who was medically declared unfit is justified? If not to what relief the said dependant of the workman entitled?”

2. The case is received from the Ministry of Labour on 28.06.2004. After receipt of reference, both parties are noticed. They appeared through representative. The Sponsoring Union files their written statement on 03.12.2004. And the management also files their written statement-cum-rejoinder on 14.03.2005. Thereafter rejoinder and document filed by the workman. One witness examined on behalf of the workman as WW-1.

3. The management neither filed any document nor adduce any evidence to prove on their behalf. The management also not filed any document which is call for by the workman.

4. The workman admittedly fell ill and declared unfit and was asked his heir can apply for job. But while the applicant applied for job his claim was refused.

5. The workman files Form-F, in which Kunti Devi and Raj Kumar Paswan is the nominee of workman concerned.

6. But what ever may be the reason the heir of the workman is be taken into job as per the scheme.

7. The applicant who is the heir of the workman be taken into job after observing all formalities within a month after publishing the award in the Gazette failing which action may be initiated against the erring employee.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 23 फरवरी, 2015

का.आ. 392.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच,

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 57/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19/02/2015 को प्राप्त हुआ था।

[सं. एल-20012/83/2008-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 23rd February, 2015

S.O. 392.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 57/2008) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 19/02/2015.

[No. L-20012/83/2008-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD**

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

Reference No. 57 of 2008**Parties:-**

Employer in relation to the management of
Sijua Area of M/S BCCL

AND

Their workman

Present:- Sri R.K. Saran, Presiding Officer

Appearance:-

For the employers : Shree S.N.Ghosh, Advocate

For the Workman : Shree Niraj Kr. Singh, Rep.

State :- Jharkhand Industry:- Coal

Dated 20/1/2015

AWARD

By order No. L 20012/83/2008- IR(CM-I) dated 18-11-2008 the Central Government in the Ministry of Labour has, in exercise of power conferred by clause (d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“ Whether the action of the management of Mudidih Colliery under Sijua Area of M/s. BCCL in not providing dependent employment to Sri Gangadhar

Mahato, son of late Rameshwar Mahto, Tyndal under the provision of NCWA is justified & legal?
(ii) To What relief is the dependent son of late Rameshwar Mahato entitled?"

2. The case is received from the Ministry of Labour on 24.11.2008. After receipt of reference, both parties are noticed. They appeared through representative. The workman files their written statement on 09.02.2009. And the management also files their written statement -cum-rejoinder on 01.04.2010.. Thereafter rejoinder and document filed by the parties. Management examined one witness as MW-1 but workman adduce two witnesses. Document marked by the management as Ext. M-1 to M-6 and the workman also marked document W-1 to W-14.

3. The Short point to be decided in this case is the deceased workman died during service while under treatment. After the death of the workman, his son applied for job under compassionate appointment scheme but the same was regretted due to delay in submitting application.

4. For filing proper application, time usually taken to make it complete due to many official bottle neck. Therefore for the said ground, the job should not be refused.

5. Considering the facts and circumstances of this case, I hold that the action of the management of Mudidih Colliery under Sijua Area of M/S BCCL in not providing dependent employment to Sri Gangadhar Mahato, son of late Rameshwar Mahto, Tyndal is not justified. Hence the applicant be given job after observing due formality with checking identity.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 23 फरवरी, 2015

का.आ. 393.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 02/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19/02/2015 को प्राप्त हुआ था।

[सं. एल-20012/106/2008-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 23rd February, 2015

S.O. 393.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 02/2009) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL

and their workmen, received by the Central Government on 19/02/2015.

[No. L-20012/106/2008-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

Ref. No. 02 of 2009

Employer in relation to the management of Lodna Area M/S BCCL

AND

Their workmen.

Present:- Sri Ranjan Kumar Saran, Presiding Officer.

Appearances :

For the Employers : Sri S.N. Ghosh, Advocate

For the workman : Sri R.R. Ram, Rep.

State : Jharkhand

Industry :- Coal

Dated 25/11/2014

AWARD

By Order No.L-20012/106/2008-IR (CM-I), dated 30/01/2009, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Bagdigi Colliery of M/s. BCCL in not providing dependent employment to Shri Ranjeet Manjhi S/o Late Gandu Manjhi, General Mazdoor, under the provision of NCWA is justified and legal? (ii) To what relief is the son of Late Gandu Manjhi entitled?"

2. This Case is received from the Ministry of Labour & Employment on 13.02.2009. After receipt of reference, both parties are noticed. The Sponsoring Union files their written statement on 05.03.2009. The management files their written statement on 05.02.2010. One witness each has been examined from both side. Document marked as W-1 to W-4 by the workman.

3. The short point that involved in this reference is that whether the applicant, who is the dependent of the deceased workman is to get the dependent employment benefit or not.

4. The management admitted that the applicant is the heir of the deceased, but his only grievance is the

dependent filed application after 3 years, though the time limit for application is 18 months.

5. It is really difficult for the dependant of the deceased to get all the connected document for job within 18 months. Delay of 3 years is not much.

6. Considering the facts and circumstances of the case, It is held that the action of the management of Bagdigi Colliery of M/S BCCL in not providing dependent employment to Shri Ranjeet Manjhi S/o Late Gandu Manjhi, General Mazdoor, under the provision of NCWA is not justified. The workman be given employment waiving stringent formality soon. after publication of the award in the official Gazette.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 23 फरवरी, 2015

का.आ. 394.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 1/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19/02/2015 को प्राप्त हुआ था।

[सं. एल-20012/131/2007-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 23rd February, 2015

S.O. 394.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1/2008) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 19/02/2015.

[No. L-20012/131/2007-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

Ref. No. 01 of 2008

Employer in relation to the management of Govindpur Area No. III of M/S BCCL

AND

Their workman

Present:- Sri R. K. Saran, Presiding Officer

Appearances :

For the Employers : None

For the workman : Sri B. B. Pandey, Advocate

State : Jharkhand

Industry : Coal

Dated 26/11/2014

AWARD

By Order No. L-20012/131/2007-IR (CM-I), dated 31/12/2007, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Akashkinaree Colliery of M/S BCCL in dismissing the service of Shri Santosh Manjhi, Miner w.e.f. 05.02.2004 is justified and legal? If not, to what relief is the concerned workman entitled?”

2. This case is received from the Ministry of Labour on 14.01.2008. After receipt of reference, both parties are noticed, the workman files their written statement on 24.01.2014. The point involved in the reference is that the workman has been dismissed from his services.

3. During preliminary hearing it is revealed that the case is dismissal of workman for long absence on duty. But he has already out of service for 10 years. It is felt to give another chance to the workman to serve.

4. Considering the facts and circumstances of the case, I hold that he be taken into job as a fresh employee. But the workman be kept under probation for period two years and his performance report be given to the under signed. Therefore, the question of back wages does not arise at all.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 23 फरवरी, 2015

का.आ. 395.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 216/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19/02/2015 को प्राप्त हुआ था।

[सं. एल-20012/32/2000-आईआर (सी-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 23rd February, 2015

S.O. 395.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 216/2000) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 19/02/2015.

[No. L-20012/32/2000-IR(C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of
I.D. Act, 1947

Ref. No. 216 of 2000

Parties :

Employer in relation to the management of
Katras Chaitudih Colliery M/s. BCCL

AND

Their workman

Present:- Sri Ranjan Kumar Saran, Presiding Officer.

Appearances :

For the Employers : Sri D. K. Verma, Advocate

For the workman : Sri R.R. Ram, Rep.

State : Jharkhand Industry :- Coal

Dated 21/01/2015

AWARD

By order No. L 20012/32/2000- (C-I) dated 24.7.2000, the central Government in the Ministry of Labour has, in exercise of power conferred by clause (d) of Sub-Section(1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Katras Chaitudih Colliery of M/S BCCL in rejecting the claim of Sri Binod Kumar Nonia dependant son of late Shanti Nonia for employment is justified? If not to what relief the said dependant entitled?

2. The case is received from the Ministry of Labour on 07.08.2000. After receipt of reference, both parties are noticed. They appeared through representative. The Sponsoring Union files their written statement on 04.01.2001. And the management also files their written statement -cum-rejoinder on 19.02.2002. Thereafter rejoinder and document filed by the workman. One witness from each side examined on their behalf. Document

marked by the management M-1 to M-5 and document of workman marked as W-1 to W-4.

3. The applicant the son of the deceased workman applies for, while he was minor, and his prayer was refused. Again when he filed an application for job after being major the same was not accepted. The applicant appears to be physically handicapped. Therefore if he is fit he be taken in job in physically handicapped quota.

4. If that is not possible, his younger brother who has filed certificate etc, be taken into job, after verifying all formality and keeping condition that he will look after the entire family members of the deceased workman

5. There is no reason to regret the claim of the workman. The workman be taken to job soon after the publication of the award in Gazette.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 23 फरवरी, 2015

का.आ. 396.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 37/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19/02/2015 को प्राप्त हुआ था।

[सं. एल-20012/57/2007-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 23rd February, 2015

S.O. 396.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 37/2007) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 19/02/2015.

[No. L-20012/57/2007-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of
I.D. Act, 1947

Ref. No. 37 of 2007

Parties :

Employer in relation to the management of
Lodna Area M/s. BCCL

AND

Their workman

Present : Sri Ranjan Kumar Saran, Presiding Officer

Appearances :

For the Employers : Sri S.N. Ghosh, Advocate

For the Workman : Sri N.M. Kumar, Advocate

State : Jharkhand

Industry : Coal

Dated 21/01/2015

AWARD

By order No. L-20012/57/2007-IR (CM-I) dated 12.7.2007, the Central Government in the Ministry of Labour has, in exercise of power conferred by clause (d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Jeanagora Colliery of M/s. BCCL in not providing dependent employment to Kumari Sakuntala Modin D/o Late Chanda Modin W/Loader under the provision of NCWA is justified and legal? If not, to what relief is the dependent daughter of the concerned deceased employee entitled?

2. The case is received from the Ministry of Labour on 24.07.2007. After receipt of reference, both parties are noticed. They appeared through representative. The Sponsoring Union filed their written statement on 10.09.2007. And the management also filed their written statement-cum-rejoinder on 18.03.2009. Thereafter rejoinder and document filed by both parties. One witness examined on behalf of the management. But three witnesses examined on behalf of the workman. Document marked by the management as Ext. M-1 to M-8 and document of workman marked as W-1 to W-6 as well as one document also marked as Ext. C-1.

3. Applicant Sakuntala is admittedly daughter of Late workman Chanda Modi. She submitted that she took the gratuity of her late mother showing her father predeceased her mother. But Management counsel filed the affidavit of her father who claims that he is alive and her daughter shown her dead and took away the Gratuity. Even the management filed the affidavit of husband of Shakuntala Modin.

4. But the applicant filed the death certificate of her father who died on 18/10/1988. and the death certificate was issued on 14.8.2002 by the competent authority. Its genuineness was challenged by the management, and for its genuineness, query was made to the competent authority. Who replied to enquire the matter at our level.

5. From the death certificate of father of applicant her grandfather's name was Bhagto Modi but from the affidavit of so called father's father name was mentioned as late Mohan Modi. So called father of the applicant filed photo copy of Bank Pass Book Marked as M-5 which shown that he is son of Mohan Modi But in the same pass book. he has filed a certificate it is shown that the Grand father of the applicant is late Bhagat Modi which tallies from the death certificate of her father.

6. The photocopies of the affidavit of so called father, and husband is misleading and evidence of management witness regarding father of the applicant is not acceptable.

7. Therefore taking into death certificate and her Gratuity order, it is clear that, she is the daughter of the deceased workman and entitled to compassionate appointment.

8. Considering the facts and circumstance of this case, I hold that the action of the management of Jeanagora Colliery of M/s. BCCL in not providing dependent employment to Kumari Sakuntala Modin D/o Late Chanda Modin W/Loader under the provision of NCWA is not justified and legal, Hence the management is directed to give appointment to Sakuntala Modin soon after the publication of the award in the Gazette.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 23 फरवरी, 2015

का.आ. 397.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 42/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19/02/2015 को प्राप्त हुआ था।

[सं. एल-20012/79/2007-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 23rd February, 2015

S.O. 397.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 42/2007) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 19/02/2015.

[No. L-20012/79/2007-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/S 10 (1) (d) (2A) of
I.D. Act, 1947

Ref. No. 42 of 2007

Employer in relation to the management of
Kustore Area of M/s. BCCL

AND

Their workman

Present : Sri R. K. Saran, Presiding Officer.

Appearances :

For the Employers : Sri D. K. Verma, Advocate

For the Workman : Sri D. Mukherjee, Advocate

State : Jharkhand Industry : Coal

Dated 17/12/2014

AWARD

By order No. L-20012/79/2007 IR-(CM-I), dated 09/08/2007, the Central Govt. in the Ministry of Labour has, in exercise of powers conferred by clause (d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Kustore Colliery of M/s. BCCL in not providing dependent employment to Shri Lakhinder Kumar, S/o Late Upas Ravidas M/Loader, under the provision of NCWA is justified and legal? If not, to what relief is the dependent son of late Upas Ravidas entitled?”

2. The case is received from the Ministry of Labour on 21/24.08.2007. After receipt of reference, both parties are noticed, the workman files their written statement on 01.01.2009. The management also files written statement –cum- rejoinder on 24.09.2009. Both side adduce one witness each on their behalf. The workman's one document marked as W-1.

3. The short point to be decided in this case, as to whether the applicant who is admittedly the legal representative of the deceased workman be absorbed in the company under compassionate appointment scheme.

4. Though the workman applied for the job in place of deceased father, the same was rejected as the application was filed beyond the time stipulated by the management. But now a days due to administrative bottleneck entire enclosure of the application for job may not be available.

5. Considering the facts and circumstances of this case, it is held that the action of the management of Kustore Colliery of M/s. BCCL in not providing dependent employment to Shri Lakhinder Kumar, S/o Late Upas Ravidas M/Loader, under the provision of NCWA is not justified. Hence, the management to accept the application and to give job to the applicant waiving formality.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 23 फरवरी, 2015

का.आ. 398.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 36/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19/02/2015 को प्राप्त हुआ था।

[सं. एल-20012/15/2014-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 23rd February, 2015

S.O. 398.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 36/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 19/02/2015.

[No. L-20012/15/2014-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/S 10 (1) (d) (2A) of
I.D. Act, 1947

Ref. No. 36 of 2014

Employer in relation to the management of
Civil Engineering Deptt., Koyla Bhawan, M/s. BCCL

AND

Their workman

Present : Sri R. K. Saran, Presiding Officer.

Appearances :

For the Employers : Sri D. K. Verma, Advocate

For the Workman : Sri Pintu Mondal, Rep.

State : Jharkhand Industry : Coal

Dated 8/12/2014

AWARD

By order No. L-20012/15/2014- IR(CM-I) dated 07-03-2014 the Central Government in the Ministry of Labour has, in exercise of power conferred by clause (d) of Sub-Section(1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Civil Engineering Department of BCCL, Koyla Nagar in denying promotion to Sri Jai Prakash Sharma in the post of Asstt. Foreman (Electrician) T&S Grade C from 21.03 2008 and as Foreman (Electrician) T&S Grade-B from 12.06.2013 is fair and justified? To What relief the concerned workman is entitled to?”

2. The case is received from the Ministry of Labour on 28.03.2014. After receipt of reference , both parties are noticed. They appeared through representative. The Sponsoring Union files their written statement on 16.04.2014. the management also files their written statement -cum-rejoinder on 17.07.2014.. Thereafter rejoinder and document filed by the parties. And Management marked one document as Ext. M-1.

3. The Short point to be decided in this case as to whether the workman is to be given promotion as Electrician Grade-”C” from 21.03.2008 and as foreman (Electrician) T&S Grade-B from 12.06.2013 .

4. Though the workman files document he is to be given the grade claimed, the management submitted as per the cadre Rule, the workman though qualified is not entitled to out of turn promotion as such electrician are getting , who have mining supervisory certificate.

5. The management counsel submitted that as per cadre Rule ; -

Rule -1. note

(i) xxxx

(ii) An electrician before reaching cat-Vi in case obtains supervisor ship certificate valid for mines will be placed in the next higher category irrespective vacancy.

6. Admittedly the workman has no supervisory certificate valid for mines, as the workman works in the supervisory capacity in headquarters, seeing maintenance of quarters, office, Hospital etc. If this is the position as to whether the workman entitled to the promotion as claimed. The workman in his argument notes pointed out that in the same cadre scheme (6) iii & iv, it is mentioned that such mining supervisory certificate is not required for

supervisory work in surface. Such Cadre scheme is quoted below :

(6)(iii) Exemption of DGMS will be obtained for giving affect to such authorization/ promotion as electrical supervisor

XXXXXXX

(iv) The benefit of exemption of holding mining parts of electrical Supervisory competency certificate should also be extended to the foreman working in Housing colonies, maintenance office, hospital and other establishment on the surface in addition to the establish mentioned in II No. 32 of 1992 .

7. This being the situation to get out of turn promotion the present workman is entitled , and some persons have given promotion in this way as pointed out by the workman. If it is true , it is purely discriminatory attitude of the management which maintains different standard for different set of workman of the same cadre.

8. The management also does not dispute the genueness of the supervisory certificate of the workman nor his potentiality. The workman obtained supervisory certificate on 10.01.2000.

9. Considering the facts and circumstances of this case, I hold that the action of the management of Civil Engineering Department of BCCL, Koyla Nagar in denying promotion to Sri Jai Prakash Sharma in the post of Asstt. Foreman (Electrician) T&S Grade C from 21.03 2008 instead of Cat. vi and as Foreman (Electrical) T&S Grade-B from 12.06.2013 is not fair , Therefore the claim of the workman, that he be given promotion to foreman (Electrical) T&S Grade “C” from 21.3.208 and as foreman (Electrician) T &S Grade “B” from 12.6.2013 is allowed and accordingly prepare the seniority list . The management is directed to give effect the award of this Tribunal soon after its publication in the official Gazette.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 23 फरवरी, 2015

का.आ. 399.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 161/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20/02/2015 को प्राप्त हुआ था।

[सं. एल-20012/261/2000-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 23rd February, 2015

S.O. 399.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 161/2000) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. CCL and their workmen, received by the Central Government on 20/02/2015.

[No. L-20012/261/2000-IR(C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT : Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section
10(1)(d) of the I.D. Act, 1947

REFERENCE NO. 161 OF 2000

PARTIES : The Asstt. Secretary,
United Coal Workers Union,
PO & Distt: Giridih

Vs.

General Manager,
Giridih Are of M/s CCL,
PO: Beniadih, Distt : Giridih

Ministry's Order No L-20012/261/
2000(C-I) dt. 25.10.2000

APPEARANCES :

On behalf of the : Mr. S.N. Goswami, Ld. Advocate
workman/Union

On behalf of the : Mr. D. K. Verma, Ld. Advocate
Management

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 29th Jan., 2015

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10 (1) (d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No L-20012/261/2000(C-I) dt. 25.10.2000.

SCHEDULE

“Whether the action of the Management of Beniadih Colliery of M/s CCL in not regularizing Sri Basudeo Saw as E.P.Greaser in Excvn. Gr.”E” is fair and justified? If not, to what relief is the concerned workman entitled and from what date?”

On receipt of the Order No. L-20012/261/2000(C-I) dt. 25.10.2000 of the above mentioned reference from the

Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No.161 of 2000 was registered on 24.11.2000 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own respective Ld. Counsels appeared in, and contested the case.

2. The case of workman Basudeo Saw as sponsored by the United Coal Workers Union is that he was appointed as Worker Category II by the Area Management on 17.10.1985 at the Open Cast Project Mine, Giridih Area of M/s CCL. He had been engaged by the Management in exigency to perform the job to properly repair and maintenance of Excavation Plant Machineries, as well as to do the job of Excavation Plant Greaser (EPG) in the year 1992. He efficiently performed the job during the three years from 1992 to 1994, and had got experience in the job of E.P.G. Therefore, he represented and claimed for his regularization as E.P. Greaser Gr. E (Excavation Cadre) in the pay scale of Rs.69.75-1.85-95.65 (NCWA-V), though his service conditions were maintained as Category II worker (Mining Cadre) in the pay scale of Rs.66.86-1-33-85.48 (NCWA V). The Management had assured him to favourably consider it on the completion of his formal probationary period for six months on the post of the E.P.G. officially. Accordingly, he was appointed by the Management to work as the E.P.G., i.e., for repair and maintenance of Dumper, Dozer and pay Loader as per the appointment Letter No.23 dt.01.01.1996.

Further pleaded case of the workman is that as per the provision of the Certified Standing Order of the CCL, if a permanent workman employed as a probationer on a new post and if unreverted to his old permanent post within six months or latest by another three months shall be deemed to have been confirmed on the said post. After the said period, the workman again demanded for his regularization as E.P.G. G., but the Management resorted to delay tactics as denied justice. Finally the industrial Dispute raised before the ALC®, Dhanbad V due to its failure in reconciliation resulted in the reference for an adjudication. He had been denied the right of Natural justice only because his service condition maintained as Category II (Mining), and not that of Excv. Cadre. The Management is alleged to have continuously exploiting the workman in the Excavation Section contrary to the law. So the action of the Management in not regularizing the workman as EPG Gr.E (Excav) is illegal and unjustified,

3. The Union for the workman in its rejoinder has specifically denied the allegations of the OP/Management as incorrect and baseless, further stating that in course of the joint discussion on 14.08.1996, the Management had assured to examine his case through the DPC for Cat. Mechanical fitter as per the record Note dt.16.09.1996. Lesser payment of wages to the workman than that of the job performing for the last more than seven years is an admission of the OP/Management.

4. Whereas the contra case of the OP/Management challenging the maintainability of the reference as unjustified is that the workman never raised any grievance earlier before the Management in respect of the dispute. He is performing the nature of job as per the designation, drawing the wages as earlier. Though his engagement as EPG/H in most irregular manner was for maximum 3-4 days at a stretch only in absence of the regular employee as a substitute in exigency. There was no existence of any sanction vacant post at the relevant time, i.e., during the Manpower Budget 1999-2000. Temporary performance of the job of the EPG/H in exigency can not confer on him any right to claim for the regularization. As per the norms of the company in the terms of administrative canon, the Management is required to give equal opportunity to all the eligible employees. In case of a Notification by the company for such vacant post, the workman may apply for it subject to the candidature of the employee therefor required to the Company in future.

The OP/Management as categorically denied the allegation of the workman as incorrect, further stating that the Management had authorized the workman to learn repair and maintenance but he was never engaged as a Greaser. Nor the workman was appointed as the Probationer on the post of the Greaser. The workman is working as Cat. II worker; thus the action of the Management is legal and justified.

FINDING WITH REASONS

5. In the instant case, WWI Basudeo Saw the workman himself on behalf of the Union, and MWI R.K.P. Singh, the Chief Manager (Pers. & Admn.) for the OP/Management, have been respectively examined.

On perusal of the materials available on the case record, it appears that there is no dispute while the workman was working as General Mazdor Cat.II, he was authorized to learn repair and maintenance of Haul Pack, pay Loader and Dozers as per the authority dt.1.1.1995 (Ext.W.2). It is also an undisputed fact that the post of EP Greaser/helper comes under the Excavation Cat. E of the Excavation which has its own cadre beginning from Cat.II EP Mazdoor (Excavation Plant). It can not be denied that Excavation has its own criteria for promotion. A workman for promotion to EPG in Cat. E must have qualification such as three years' experience as Mazdoor Cat.II, as some of the Mazdoor Cat.II have been temporarily promoted to the post of EPG Helper Cat.E as per the

Office Order 12.04.2012 (Ext. M.1 on formal proof waived). There is a seniority list of the employees Cat.II engaged in CPG/H of Giridih Project (Ext.M.2) which contains the names of the workman Basudeo Saw under to Sl.No. 20. Accordingly to the Seniority list as maintained by the OP/Management Grokha Chammer under its Sl.No. 18 has got temporary promotion to the post of GPG/H Cat.E on the recommendation of the DPC and approval of the Competent Authority. It appears that the workman has not passed any competency test conducted by DGMS for the job nor he appears to have got vocational training for excavation and maintenance.

Mr. S.N. Goswami, Ld. Advocate for the workman has submitted that the workman has been still working as Greaser since 1992 but the Authorization Letter (Ext.W.2 on admission) appears to be dated 01.01.1995. Further it has been submitted on behalf of the workman that despite his representations dt.12.12.1995 and the discussion dt.16.09.1996 (Ext.W.4) the workman was not regularized as he claimed; thus he is entitled to regularization accordingly.

In response to it, Mr. D.K. Verma, Ld. Counsel for OP/Management submits it is an acknowledged fact that the Excavation has its own cadre scheme (Exgt.M.3) under which a promotion in Ex.Cat. E from EP Helper needs three years' experience as Mazdoor Cat.II as eligibility/qualifications and thereafter it is recommended by the DPC (Departmental Promotion Committee); but the present workman has no such qualification, so he is not entitled to regularization.

In view of the aforesaid circumstances, there is no doubt the sole claim of the workman for regularization lies on the aforesaid authorization, but it is unsustainable only because, it stands beyond the Excavation Cadre.

Therefore, it is hereby responded and accordingly awarded that the action of the Management of Beniadih Colliery of M/s BCCL in not regularizing Sri Basudeo Saw as EP Greaser in Excav. E is quite fair and justified; therefore workman is not entitled to any relief from any date, as he was temporarily engaged in the Excavation for a few days only in exigency.

KISHORI RAM, Presiding Officer

नई दिल्ली, 23 फरवरी, 2015

का.आ. 400.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टिस्को के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 121/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20/02/2015 को प्राप्त हुआ था।

[सं. एल-20012/241/1997-आईआर (सी-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 23rd February, 2015

S.O. 400.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 121/1998) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. TISCO and their workmen, received by the Central Government on 20/02/2015.

[No. L-20012/241/1997-IR(C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT : Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section
10(1)(d) of the I.D. Act, 1947

REFERENCE NO. 121 OF 1998

PARTIES : Shri D.K. Bhagat,
C/o Vijay Store, Church Road,
Ranchi
Vs.
General Manager,
West Bokaro Collieries of
M/s. Tisco PO: Ghatotand,
Distt: Hazaribagh.
Ministry's Order No L-20012/241/
97-IR (Coal-I) dt. 22.04.1998

APPEARANCES :

On behalf of the : Mr. U. N. Lal, Ld. Advocate
workman/Union
On behalf of the : Mr. D. K. Verma, Ld. Advocate
Management
State : Jharkhand Industry : Coal

Dated, Dhanbad, the 13th Jan., 2015

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10 (1) (d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/241/97-IR (Coal-I) dt. 22.04.1998.

SCHEDULE

“Whether the action of the Management of West Bokaro Collieries of TISCO Ltd., PO: Ghatotand, Distt: Hazaribagh in dismissing Shri D.K. Bhagat from the Company service w.e.f. 16.07.1990 is justified? If not, to what relief is the workman entitled?”

On receipt of the Order No. L-20012/241/97-IR (Coal-I) dt. 22.04.1998 of the above mentioned reference from the Government of India, Ministry of Labour & Employment,

New Delhi for adjudication of the dispute, the Reference Case No. 121 of 1998 was registered on 25.05.1998 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own respective Ld. Counsels appeared in, and contested the case.

2 The case of workman D.K. Bhagat as represented in his written statement is that he had been unblamishly working as a permanent workman against permanent vacancy at West Bokaro Colliery of M/s Tisco. He had put more than 240 days attendance in each calendar year. Some officials of the Company were biased against the workman for his uprightness, and not obliging anybody to do any illegal act or pilferage of any article of the Company. So they conspiredly and malafide issued him a false and frivolous chargesheet under clause 27(2) of the Certified Standing Order of the Company for alleged deliberately marking his attendance for the period from 01.06.89 to 3.6.1989 while he was on leave. He had also replied to the chargesheet, denying the charge emphatically as not constituting any misconduct, and stating his remaining on leave to attend his sick mother on death bed, that he was posted at Chainpur Railway Siding, but he had to mark his attendance at Ghatotand. Due to the fact and mental tension, he had inadvertently committed the mistake, and prayed for condoning it. The anti-labour Management did not consider the facts of the workman, and terminated /dismissed him from service while working as the Security Inspector against the principles of natural justice, as the chrgesheet was issued by an unauthorized person. No enquiry was held in his peresence. He had represented before the Management against his arbitrary and illegal dismissal which was harsh and disproportionate. Finally, he raised the Industrial Dispute before the ALC©, Hazaribagh, but the failure of its conciliation resulted in the reference for an adjudication. Thus the action of the Management in dismissing the workman was vindictive, illegal, and unjustified.

The workman in his rejoinder has specifically denied all the allegations of the OP/Management as false and frivolous.

3. Whereas challenging the maintainability of the reference, the contra case of the OP/Management is that the workman as the Senior Security Inspector had the duties of Supervisor and control over the personnel of the security department. He was drawing his wages more than Rs.1600/- per month. He was not a workman under Section

2(s) of the Industrial Dispute Act, 1947, so it is not an Industrial Dispute, rather it is an Individual dispute which is unmaintainable. He was appointed as Senior Security Inspector w.e.f. 15.3.1989 on probation, during which he turned out to be a man of no integrity. He had unauthorisedly absented from his duties from 01.06.1989 to 03.06.1989. Thereafter he represented before the Management to treat his absence from duties as leave, as he had no leave due under the leave rule of the Company and provisions of the Mines Act. However, the Management regularized his unauthorised absence as leave without pay for the period from 01.06.1989 to 03.06.1989. The workman booked his attendances for the period, and he received his salary including the aforesaid three days wages for the month of June, 1989. After checking it, it came to the knowledge of the management, he was issued the chargesheet dt. 11.07.1989 under the clause 27(2) of the Certified Standing Orders of the Company for the misconduct of dishonest in respect of its business. He also replied to it on 13.07.1989, confessing his guilt with a prayer to drop it. But on the departmental enquiry fairly held by Sri S.K. Tripathy in presence of the workman, the Enquiry Officer submitted his enquiry report, holding his guilty of the charge proved. Having all the aspects, the Management as per the letter dt 12.07.1990 dismissed the workman from his service. So the workman is not entitled to any relief.

The OP/Management in their rejoinder has categorically denied all the allegations of the workman as false and wrong.

FINDING WITH REASONS

4. In the instant case, at the preliminary point, the Tribunal on the examination of the MWI Ramesh Chandra Pathak and the WWI D.K. Bhagat the workman himself, as per the Order No.52 dt.06.2012 held the domestic enquiry fair, proper and in accordance with the principles of natural justice. It came up for hearing the final arguments of both the parties on merits.

Mr. U. N. Lal, the Ld. Advocate for the workman has submitted that no other leave in probation period was admissible to the workman, he on his application was granted three days leave without pay for his unauthorised absence duty from Jun 01 to 3, 1989 due to his attaining to his ailing mother; that he had to perform his duty at Chainpur Railway Siding 14-18 Kms. away from the Head Quarter, Ghatotand where attendance was marked not daily but monthly at a time; and under these circumstances, the workman had accepted to have inadvertently marked his attendances for aforesaid three days. It is also submitted that no second show cause Notice was issued to the workman and the punishment of dismissal for a small mistake was improper and disproportionate; therefore, he is entitled to reinstatement in service with back wages.

In quick response to it, Mr. D.K.Verma, Learned Counsel for the OP/Management has contended that the workman was initially appointed as the Senior Security Inspector on probation for six months, during which he unauthorisedly absented from his duty for the said three days, and on his joining, he also marked his attendances in the Attendance Register, and had also drawn his wages for his absent days; for such misconduct, his dismissal from service for his fraud attendance was not harsh rather proper, as he was not a confirmed employee.

From the aforesaid contentions of both the learned Counsels for their respective parties, the main point emerges whether the punishment of dismissal to the workman for his aforesaid misconduct during his probation is legal and justified.

On perusal and due consideration of the materials available on the case record, it appears no dispute that the delinquent workman, at the very outset in his reply to the chargesheet had confessed his guilt for his misconduct of marking his attendance for his unauthorized absence period from 1.6.1989 to 03.06.1989 due to his mental upsetness, as he had to proceed for duty WBC Railway Siding, Chainpur from the month of May, 1989 but attendance Register was at the H.Qr, where he had to mark his attendance; naturally not on daily basis, rather in accordance with the convenience; the delinquent workman appears to have submitted to the Management for adjusting the three days leave wages from next month of July, 1981. The workman on probation had no leave due under the rule of the Company. In natural course of conduct, it prima facie appears that the employee as Sr. Security Guard was working in the aforesaid two contingencies, namely, his sole responsibility to attend to his ailing mother and secondly to attend his duty at his deputed place and marking his attendance at the H.Qr. The Enquiry proceeding lacks second Show Cause to the workman prior to awarding him the penalty of dismissal for his aforesaid misconduct.

Under these circumstances, it appears to me that awarding the delinquent the punishment of dismissal for the said pretty misconduct in the very initial career of his service appears to be too harsh and disproportionate to the nature of the offence. Hence the dismissal of the workman from the service appears to be unjustified. Hence it is set aside under Section 11 A of the Industrial Dispute Act.

In result, it is, hereby, in the terms of Reference responded and accordingly awarded that the action of the Management of West Bokaro Collieries of TISCO Ltd., PO: Ghatotand, Distt: Hazaribagh in dismissing Sri. D.K. Bhagat from Company service w.e.f. 16.07.1990 is unjustified in eye of law and facts both. Therefore, the workman is entitled to his reinstatement in the service of the Company, but without back wages.

KISHORI RAM, Presiding Officer

नई दिल्ली, 23 फरवरी, 2015

का.आ. 401.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ हैदराबाद के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 68/2005 व 33/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/02/2015 को प्राप्त हुआ था।

[सं. एल-12025/01/2015-आईआर (बी-1),

सं. एल-12012/173/2005-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 23rd February, 2015

S.O. 401.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 68/2005 & 33/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the management of State Bank of Hyderabad and their workmen, received by the Central Government on 23/02/2015.

[No. L-12025/01/2015-IR (B-I),

No. L-12012/173/2005-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 29th day of December, 2014

COMMON AWARD IN INDUSTRIAL DISPUTE Nos. L.C. 68/2005 and ID. 33/2006

Between :

Sri P. Srinivas,
S/o P. Ramulu,
C/o A.P. Industrial Employees Union,
“House of Labour”, King Kothi Road,
Hyderabad -29

...Petitioner

AND

1. The Dy. General Manager,
Personal Department,
State Bank of Hyderabad,
Gunfoundry Head Office,
Hyderabad .
2. The Branch Manager,
State Bank of Hyderabad,
Bellavista Branch,

Somajiguda Branch,
Hyderabad

...Respondents

Appearances:

For the Petitioner : M/s. V. Viswanatham &
R. Dushyantala, Advocates

For the Respondent : M/s. Ch. Siva Reddy &
T.G. Prasad Reddy, Advocates

COMMON AWARD

Sri P. Srinivas invoking Sec.2A(2) of Industrial Disputes Act, 1947 (who will be referred to as workman) has filed this petition against the Respondents seeking for passing an award directing the Respondent to reinstate the Petitioner into service from 6.6.2005 with full back wages and all other attendant benefits with continuity of service and to pay interest @ 12% p.a. on the back wages and costs.

2. While so a reference in ID No. 33/2006 has been received by this forum from Government of India, Ministry of Labour and Employment, New Delhi vide order No.L-12012/173/2005-IR(B-I) dated 22.5.2006, whereunder, this forum has been invited to give award on the question of,

“Whether the action of the management of State Bank of Hyderabad, not regularising the services of Sri P. Srinivas, Casual Worker is legal and justified? If not, what relief the workman is entitled to?”

By virtue of the order dated 11.9.2008, these two cases i.e., LC 68/2005 and ID 33/2006 were clubbed together and the proceedings were conducted commonly for both these matters in LC 67/2005.

3. No claim statement has been filed by the Petitioner in ID 33/2006.

4. **The averments made in the petition in brief are as follows:**

It has been stated by the Petitioner that he was appointed by the Respondent as casual labour from 18.6.1996 and was posted under 2nd Respondent where the Petitioner worked for more than 240 days continuously without any break in that year on a wage of Rs.50/- per day. The Petitioner has worked in that capacity for more than 9 years but he was not made regular. When the Petitioner insisted for regularization and asked for the correct payment of wages then the services of the Petitioner were terminated on 6.6.2005 without any written order or following the due procedure. Before that the Petitioner made a representation dated 19.5.2005 to regularize his services and pay arrears of wages as per the wages paid to the casual labourer of Kakatiyanagar branch who raised ID No.35/2001 which was decided on 24.9.2002 and the casual labour of the Kakatiyanagar branch were given wages as per rules and they were also paid arrears of the wages. The Petitioner moved a petition to follow

the procedure of 1/3rd pay after two years one half of pay after another two years and 3/4th pay after another two years. The Petitioner further served a reminder on 31.5.2005 but no action was taken by the Respondent management. The action of the management in orally terminating the services of the Petitioner is illegal and against the principles of Industrial Disputes Act, 1947. The Hon'ble High Court of A.P. in WP No.15555/93 directed the Respondent to consider the cases of the Petitioners of that case. Another WP No.18436/2004 decided on 11.10.2004, the Hon'ble High Court of A.P., directed the Respondent to pass appropriate order on the observations of the regular employees. But the Respondent has not obeyed that order also. Hence, this petition.

5. The Respondent management has filed counter statement with the averments in brief as follows:

The Respondent management has filed counter statement. They have challenged the maintainability of the claim petition. The Respondent has submitted that the Petitioner has not worked for more than 240 days. He was not on the rolls of the bank as such, the question of termination of the services did not arise, the allegation to this effect is baseless and misconceived. The bank has never engaged Petitioner in their employment nor the vacancies were notified, the Petitioner was engaged for casual work when his services were required by the bank. He was never employed as regular or a full day worker. He is not entitled for the benefit sec.25F of the Industrial Disputes Act, 1947, because he was engaged to work as and when the bank required services of the Petitioner, he was employed for that date only. The Petition has no force and deserves to be rejected or dismissed. The Petitioner can not claim any advantage from the order passed in WP No.15555/93 or WP No.18436/2004 because the Petitioner was not a party to this petition.

6. To substantiate the contentions of the Petitioner WW1 was examined and Ex.W1 to W20. On behalf of the Respondent bank MW1 has been examined and Ex.M1 to M6 documents were marked.

7. Heard the arguments of the either party.

8. Point that arises for determination is:

Whether the Petitioner is workman and whether termination of his services is legal and justified? If so, to what relief the Petitioner is entitled?

9. Point:

As far as the present dispute is concerned, through the documents filed by Petitioner workman coupled with his own oral evidence as WW1, Petitioner could establish before this court that he has been working as casual labour with the Respondent bank since 18.6.1996. Sri Ch. Surender Raju, Chief Manager of the Respondent bank who has been examined as MW1 could not deny regarding the

correspondence i.e., Ex.W2, W7 and W8 when they were confronted to him. Thus, it can safely be taken that Petitioner has worked with the Respondent bank since 18.6.1996 as casual labour and therefore, he is a workman for all purposes. Contra contentions of the Respondent are not acceptable.

10. As can be gathered from the material on record, Petitioner who applied for his absorption in bank's regular service by making applications time and again and whose case has been recommended by the then Branch Manager, as can be gathered from Ex.W2 and W7, has raised an industrial dispute seeking for regularization of his service with the Respondent bank by approaching Assistant Labour Commissioner (C). Assistant Labour Commissioner (C) has made efforts to conciliate the matter, and evidently such conciliation proceedings failed.

11. While things stood so, instead of regularising the Petitioner's services, the Respondent bank has chosen to remove him from service abruptly w.e.f. 6.6.2005. There on Petitioner is constrained to approach this forum by filing this dispute seeking for his reinstatement into service.

12. Evidently and admittedly there is no compliance of Sec. 25F of Industrial Disputes Act, 1947, while removing the Petitioner from service. It is the contention of the Respondent that since the Petitioner is not a workman and Industrial Disputes Act, 1947 does not apply to him, there was no compliance of Sec.25F of Industrial Disputes Act, 1947.

13. As already observed above, the material on record clearly discloses that Petitioner has been in continuous service as casual labour with the Respondent since 18.6.1996 and thus he is a workman. Thus, the provisions of Industrial Disputes Act, 1947 will apply to him. Therefore, his retrenchment/removal from service without complying with Sec. 25F of the Industrial Disputes Act, 1947 is certainly illegal, unjust and arbitrary.

14. It is the contention of the Respondent that the principles laid down in the cases of Official Liquidator Vs. Dayanand and others (2008) 10 SCC page 1 whereunder principles laid down in the case of Umadevi Vs. State of Karnataka (2006) 4 SCC page 1 has been upheld, are applicable to the present case and that Petitioner is not entitled for the relief sought for.

15. In the above cited cases Hon'ble Supreme Court has considered the acceptable mode of public employment and non acceptable regularization of services of the persons who entered into the service by back door methods, thereby defeating the opportunity of the general public to compete for appointment to the said post etc.. Present dispute is an industrial dispute. Industrial Law is totally different from Civil Law/Administrative Law. Regularization of casual workman as regular workman

etc., are all governed by the industrial laws, rules and various circulars issued by the government from time to time touching these aspects. Public employment under Civil Law/Administrative Law is totally different.

16. Further more, in this case Petitioner is not seeking for regularization of his services. What all he is questioning is the correctness of abrupt termination of his services when he questioned the inaction on the part of the Respondent bank regarding his plea for regularization of his services, that too without complying with the Sec.25F of the Industrial Disputes Act, 1947.

17. Inspite of their own admission in their counter that "Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division) had issued a circular No.F-3/104/87-IR dated 6.8.1990, directing that all recruitment of temporary employees in the clerical/subordinate cadre shall be stopped forth with and that for the staff which was then on the rolls of the Banks, they shall be regularized as provided in the approach paper in terms of the circular issued at that time.", the Respondent bank, evidently failed to take appropriate action, in connection with the claims of the Petitioner.

18. Anyway, the question whether Petitioner is entitled for regularization of services or not is not the subject matter in this petition. Even if the same is subject matter in this petition, since it is an industrial dispute, the principles laid down in the above cited cases are not applicable.

19. For all the above referred reasons, the principles laid down in the above cited cases relied upon by the Learned Counsel for the bank are not helpful to his contentions in this case.

20. There are umpteen number of legal precedents laid down by the Apex Court whereunder it is clearly laid down that the workman who is removed from service without complying with the mandatory conditions laid down in Sec.25F of the Industrial Disputes Act, 1947 is to be ordered to be reinstated into service. Thus, the Petitioner, who is found to be a workman, is entitled to be reinstated into service of the bank w.e.f. 6.6.2005 with the benefit of continuous service. As far as back wages are concerned, since he did not render his service to the bank, but not due to his own fault, he is entitled for atleast 50% of the back wages which he would have earned but for his removal from service.

This point is answered accordingly.

Result:

In the result, petition is allowed. Petitioner shall be reinstated into service of the Respondent bank as casual labour w.e.f. 6.6.2005 with continuity of service. He shall be paid 50% of the back wages also, forth with.

Award passed accordingly. Transmit.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

WW1: Sri P. Srinivas

Witnesses examined for the Respondent

MW1: Sri Ch. Surender Raju

Documents marked for the Petitioner

- Ex.W1 : Copy of Ir.No.PER/GR.VI/F.22/2279 from the Personnel manager, Admn. to the Regional Manager, for permanent absorption under ID Act dt. 11.3.1989
- Ex.W2 : Copy of Ir. Dt.29.12.99 reg. Absorption of temporary employees on consolidate wage dt. 29.12.99
- Ex.W3 : Identity card Xerox copies
- Ex.W4 : Copy of Respondent's Ir. to Chief Manager, deputing Petitioner to take delivery dt.10.11.99
- Ex.W5 : Copy of certificate to the Petitioner to take delivery of clearing bags
- Ex.W6 : Copy of Respondent's Ir. to A.G.M., forwarding representation along with proposal dt.11.10.99
- Ex.W7 : Copy of proposal submitted by Respondent to A.G.M., recommending Petitioner for sweeper cum water boy post dt. 26.7.2001
- Ex.W8 : Copy of proposal submitted by Respondent to A.G.M., recommending Petitioner for sweeper cum water boy post dt. 27.9.2001
- Ex.W9 : Copy of Ir. of A.G.M., to the Branch Manager, Begumpet appointing Sri K. Shanker Babu as scale wage worker
- Ex.W10 : copy of Ir. of Respondent Np.F/3/430 drawing earlier letter dt.27.9.2001 and sending the proposal for appointment of Petitioner
- Ex.W11 : Copy of Respondent's letter to chief Manager, Service branch deputing the Petitioner dt. 11.4.2002
- Ex.W12 : Copy of Respondent's letter to chief Manager, Service branch deputing the Petitioner dt. 22.4.2002
- Ex.W13 : Copy of Respondent's letter to chief Manager, Service branch deputing the Petitioner dt. 14.5.2002
- Ex.W14 : Copy of Respondent's letter to chief Manager, Service branch deputing the Petitioner dt. 21.5.2002

- Ex.W15 : Copy of circular dt.5.6.2002 No.PER/2002-2003/15 directions by Head office to pay Bonus
- Ex.W16 : Copy of Respondent's letter to chief Manager, Service branch deputing the Petitioner dt.13.8.2002
- Ex.W17 : Copy of Respondent's letter to chief Manager, Service branch deputing the Petitioner dt. 27.8.2002
- Ex.W18 : Copy of Respondent's letter to chief Manager, Service branch deputing the Petitioner
- Ex.W19 : Copy of lr. of Respondent recommending the Petitioner for appointment dt.24.3.2004
- Ex.W20 : Copy of demand notice dt.19.5.2005 by WW1 to the Respondents for his promotion to next grade
- Ex.W21 : Copy of circular dt. 3.6.2005 No.PER/GR/IV/Misc./1297 issued by Head Office of all the branches to terminate the candidates
- Ex.W22 : Copy of lr. of D..M., /Per. &HRD to the State President, A.P. Industrial Employees Union that the casual labour are not workmen under the Industrial Disputes Act, 1947.
- Ex.W23 : Copy of note on augmentation of sub-staff sweepers, for date of appointment and continuation Ex.. dt. 6.5.99

Documents marked for the Respondent

- Ex.M1 : Copy of award of CGIT cum Labour Court, Hyderabad dt.24.9.2002
- Ex.M2 : Copy of order in WP No.15555/1993 dt.28.3.97
- Ex.M3 : Copy of order in WP No.18436/2004 dt.11.10.2004
- Ex.M4 : Copy of lr. of State Bank of Hyderabad head office to Sri N. Rama Krishna dt.28.3.2005
- Ex.M5 : Copy of Lr. of State Bank of Hyderabad to Sri V.S. Krishnachary dt.28.3.2005
- Ex.M6 : Copy of lr. of State Bank of Hyderabad to Sri K. Vijay Kumar dt. 28.3.2005.

नई दिल्ली, 23 फरवरी, 2015

का.आ. 402.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एम एस ए टु जैड मेंटेनेन्स एण्ड इंजिनियर सर्विस लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1,

धनबाद के पंचाट (संदर्भ संख्या 2/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/02/2015 को प्राप्त हुआ था।

[सं. एल-41011/96/2012-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 23rd February, 2015

S.O. 402.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. A 2 Z Maintenance & Engineering Service Ltd. and their workmen, received by the Central Government on 23/02/2015.

[No.L-41011/96/2012-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/s 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 2 of 2013

Employer in relation to the management of
M/s. A 2 Z Maintenance & Engineering Service (Pvt.)
Ltd under S.E Railway, Ranchi

AND

Their workman

Present :- Sri R.K.Saran, Presiding Officer

Appearances :

For the Employers : None

For the Workman : Sri U.P. Sinha, Advocate

State:-Jharkhand

Industry :- Railway

Dated- 20/01/2015

AWARD

By order No.-L-41011/96/2012 IR-(B-I), dated. 28/01/2013 the Central Govt. in the Ministry of Labour has, in exercise of powers conferred by clause (d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the denial of bonus for the year 2010-2011 to all the contract Labours and termination of services of Shri Pradip Oraon and 52 others, contract labours (as per the list) w.e.f. 4th oct.

2011/26th January, 2012 by the contractor M/s. A 2 Z Maintenance & Engineering Services (Pvt.) Ltd. engaged in the Industrial establishment of South Eastern Railways Ranchi Division for cleaning and sweeping jobs are legal and justified ? If not , what relief the workman are entitled to?"

Annexure

List of workman

1. Manu Ram
2. Pradip Oraon
3. Hajrat Ansari
4. Isnam
5. Ranjeet Tirky
6. Roshan Toppo
7. Ravi Tirky
8. Daniyal Oraon
9. Hari Prasad Singh
10. Manohar Kachhap
11. Govind Oraon
12. Budhuwa Toppo
13. Somra Bedia
14. Lohra Kerketa
15. Bijay Lakra
16. Madru Oraon
17. Kuldeep Kr. Baitha
18. Badya Kachhap
19. Budhwa Linda
20. Dongra Tirky
21. Tarzan Kachhap
22. Nishant Tigga
23. Anup E. Kujur
24. Ramesh Tirky
25. Sunil Oraon
26. Manoj Oraon
27. Ghanshyam Mahto
28. Sadhu Oraon
29. Mahadeo Toppo
30. Ravi Tirky (2)
31. Sanicharwa Oraon
32. Rajendra Mahto
33. Rewendra Singh

34. Bhanga Oraorn
35. Durga Turi
36. Anika Devi
37. Mina Bakhla
38. Budho Kachhap
39. Anita Tamba
40. Mujiba Khatoon
41. Salma Tabasum
42. Janki Devi
43. Debanti Devi
44. Manju Toppo
45. M. Khatoon
46. Sunita Tamba
47. Punam Devi
48. Rita son Tirky
49. Sanghan Devi
50. Sayada Khatoon
51. Lilabati Devi
52. Kaihi Devi
53. Bashanti Devi

2. The case is received from the Ministry of Labour on 12/02/2013. After receipt of reference, both parties are noticed, The sponsoring union files their written statement on 28.05.2013. The management was noticed by the Ministry so also from this Tribunal but none on behalf of the management appeared.

3. The sponsoring union files written statement and document which is marked as W-1 to W-6 series. And he also filed three affidavit evidence. The sponsoring union also filed photo copies of Identity card, Photo copies of ESIC, Photo copies of EPF but out of 53 workmen they only filed 33 workmen's Identity card, which shows that the management issued the same to them. But out of 33 only 15 is workmen's I.D card tallying with their name in list of workmen attached in the order of reference, which is issued by the ministry.

4. The fifteen workmen's list is as :

1. Roshan Toppo
2. Budho Kachhap
3. Budhwa Toppo
4. Meena Bakhla
5. Rita son Tirky
6. Ranjeet Tirky
7. Daniyal Oraon

8. Salma Tabasum
9. Madru Oraon
10. Kuldeep Baitha
11. Budhuwa Linda
12. Hari Prasad Singh
13. Ramesh Tirky
14. Manoj Oraon
15. Anika Devi

AND

Their workmen

Present :- Sri R.K.Saran, Presiding Officer**Appearances:**

For the Employers : Sri D. Mukherjee, Advocate

For the workman : None

State : Jharkhand

Industry-Bank

Dated- 19/01/2015

AWARD

By Order No. L-12011/79/2013-IR (B-I)) dated 12/09/2013, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of IDBI Bank to terminate the services of Sri Ashraf Ali through IDBI INTECH in contrary to the mandatory provisions is valid? To what relief the workman is entitled ?”

2. After receipt of the reference, both parties are noticed. But none appears on behalf of the workman inspite of regd. Notice. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 23 फरवरी, 2015

का.आ. 404.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आई.डी.बी. आई. बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 42/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/02/2015 को प्राप्त हुआ था।

[सं. एल-12011/78/2013-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 23rd February, 2015

S.O. 404.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 42/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of IDBI

5. Considering the fact and circumstances of this case and considering the documents, it is believed that the claim of the workman is genuine and above mentioned fifteen workmen mentioned in paragraph -4, only are entitled to be regularized and to get bonus, and they be also entitled to bonus for the year 2010-2011.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 23 फरवरी, 2015

का.आ. 403.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आई.डी.बी. आई. बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 41/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/02/2015 को प्राप्त हुआ था।

[सं. एल-12011/79/2013-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 23rd February, 2015

S.O. 403.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 41/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of IDBI Bank and their workmen, received by the Central Government on 23/02/2015.

[No. L-12011/79/2013-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD**

In the matter of reference U/s 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 41 of 2013

Employer in relation to the management of IDBI Intech Ltd.

Bank and their workmen, received by the Central Government on 23/02/2015.

[No.L-12011/78/2013-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO.1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A)
of I.D. Act, 1947

Reference No. 42 of 2013

Employer in relation to the management of
IDBI Bank

AND

Their workman

Present :- Sri R.K.Saran, Presiding Officer

Appearances:

For the Employers : Sri D. Mukherjee, Advocate

For the workman : None

State : Jharkhand Industry-Bank

Dated- 19/01/2015

AWARD

By order No.L-12011/78/2013-IR (B-1) dated 12/09/2013, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of IDBI Bank to terminate the services of Sri Ashish Kumar Rajan through IDBI INTECH in contrary to the mandatory provisions is valid? To what relief the workman is entitled ?”

2. After receipt of the reference, both parties are noticed. But none appears on behalf of the workman inspite of regd. Notice. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 23 फरवरी, 2015

का.आ. 405.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार गोवा शिपयार्ड लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण एवं श्रम न्यायालय नं. 2, मुंबई के पंचाट (संदर्भ संख्या सीजीआईटी-2/58 /2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/02/2015 को प्राप्त हुआ था।

[सं. एल-14011/42/2009-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 23rd February, 2015

S.O. 405.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Ref. No. CGIT-2/58 of 2010) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Goa Shipyard Ltd. and their workman, which was received by the Central Government on 23/02/2015.

[No.L-14011/42/2009-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO.2, MUMBAI**

PRESENT : K.B. KATAKE, Presiding Officer

REFERENCE NO. CGIT-2/58 of 2010

EMPLOYERS IN RELATION TO THE MANAGEMENT
OF GOA SHIPYARD LTD.

The Managing Director
Goa Shipyard Ltd.
Vasco-da-Gama
Goa-403 802.

AND

Their Workmen
The President
Goa Shipyard Workers Union
Velho's Building, 2nd floor
Opp. Municipal Garden
Panaji
Goa-403 001.

APPEARANCES :

FOR THE EMPLOYER : Mr. N.S. Bandodkar,
Advocate.

FOR THE UNION : Mr. Christopher Fonseca &
Mr. J.P. Noronha,
Representatives.

Mumbai, dated the 9th January, 2015.

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-14011/42/2009-IR (DU), dated 01.09.2010 in exercise of the powers conferred by

clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the charter of demands of Goa Shipyard workers Union seeking revision of enhancement in their salaries, allowances and other service conditions (as per Annexure) w.e.f. 01.01.2007 is legal and justified? If yes, what relief the workmen are entitled to?”

2. The second party union has raised industrial dispute in respect of their charter of demand for enhancement in their pay, allowances and other service conditions. As conciliation failed, the ALC © sent the failure report to Labour Ministry. Thereafter the Central Labour Ministry has sent the reference to this Tribunal. In response to the notices, both the parties appeared before this Tribunal. The second party union has filed their Statement of Claim at Ex-5. They have raised number of demands in respect of better pay and other service conditions. They have also given the year wise statement of the profit earned by the first party and prays that their charter of demand in respect of increase of better pay and other conditions be allowed and the management be directed to accept the charter of demand submitted by the workmen w.e.f. 01/10/2007 alongwith periodicity mentioned therein.

3. The first party management challenged the statement of claim vide their written statement at Ex-9. They have denied the claim of the union. In para 28 of the written statement the management however contended that, “if the twelve members (workmen) are willing to accept the settlement dt. 28/08/2009 by submitted requisite declaration the company is willing to extend the benefit of the settlement as per rules without any alteration.” After filing this written statement and amended WS Ex-9A the union have filed the application Ex-41 contending that as the first party management has shown willingness to extend the benefit of the settlement dated 28/08/2009 to these workmen, they are ready to accept the settlement with retrospective effect and all consequential benefits arising out of the said settlement without any alteration as stated in para 28 of the written statement and requested to pass appropriate order.

4. The management resisted the application vide its say at Ex-42. According to them they are willing to extend benefits of the said settlement dt. 28/08/2009 as per the rules without any alteration. They have further contended that the settlement is required to be accepted in toto including clause 92.13. As per the said clause, the employee who signs the undertaking subsequently, their arrears will be paid as decided by the management and the allowance will be applicable w.e.f. first of succeeding month from the date of signing of the undertaking/declaration. The workman cannot be allowed to accept the settlement

conditionally. Therefore the management prays that, the application be rejected.

5. In the written argument the management has also raised the point of jurisdiction stating that as issue of appropriate Govt. and jurisdiction of the Tribunal was framed as issue no.1 & 2. Therefore before passing any order on the application Ex-41, the Tribunal should decide the issues of appropriate Govt. and the jurisdiction of the Tribunal. It is submitted that Tribunal cannot decide the application if it has no jurisdiction. I accept the averments made in the written argument that, without jurisdiction this Tribunal is not competent to pass any order or dispose of this reference. Therefore in the light of request of the second party union in the application Ex-41 and the contents in the arguments of the first party, I think it proper to recast the issues as follows:

Sr. No.	Issues	Findings
1.	Whether Central Govt. is appropriate Govt. in respect of the first party undertaking?	Yes.
2.	Whether this Tribunal has jurisdiction to entertain this reference?	Yes.
3.	Whether award can be passed on the basis of averments in para 28 of the Written Statement?	Yes.
4.	What order?	As per order below.

REASONS

Issues No. 1 & 2:-

6. Both these issues are interconnected. Therefore in order to avoid repetition of discussion they are discussed and decided simultaneously. In this respect the Ld. Adv. for the first party strenuously submitted that the first party is being not governed as per the Central Govt. Rules and Regulations. Therefore though it is a Central Govt. undertaking, State Govt. is the appropriate Govt. for the same. In support of his argument, the Ld. Adv. for first party resorted to number of rulings of various High Courts and of Supreme Court. They are;

1) Garden Reach Ship Builders and Engineers Ltd. V/s. Second Industrial Tribunal 2012 II CLR 28 wherein in respect of appropriate Govt., the Hon'ble Court observed that;

“Central Govt has not confirmed any authority by a Statute on the appellant Company to carry on industry (iii) Onscrutinizing relevant documents on record the Tribunal concluded that the State Govt. is appropriate Govt. in relation to appellant Company. (iv) This being a question of fact it cannot be adjudicated by this court. In writ jurisdiction the

single judge has rightly upheld the said conclusion of Tribunal.”

7. The Ld. Adv. also resorted to Bombay High Court ruling in RCF Ltd. V/s. RCF Employees Union & Ors. 2006 III CLR 859. In this case Hon’ble Court after considering the authorities and nature of undertaking held that; the appropriate Govt. under Section 2 (a) in so far as petitioner is concerned is that the State Govt. and not the Central Govt. and consequently reference made by Central Govt was not maintainable.

8. The Ld. Adv. for first party also referred another ruling of Bombay High Court in Hindustan Organics Chemical Ltd. V/s. HOCL Employees Union 2008 III CLR 802. In that case, it was pointed out that the company was established by Central Govt. In spite of that the Tribunal held that State Govt is the appropriate Govt. for the petitioner. The Hon’ble High Court upheld the said decision of Industrial Tribunal.

9. Ld. Adv. for the first party also resorted to Tata Memorial Hospital Workers Union V/s. Tata Memorial Centre & Anr. 2010 III CLR 151 (SC) wherein the Hospital was being maintained out of the funds of the Trust and also from the grants made available from time to time by the Central Govt. and by the then Govt. of Bombay. While deciding the point of Appropriate Govt. in para 62 of the judgement, Hon’ble Apex Court observed that;

“....even on the test of control and management of the hospital and the Centre, they are functioning independently under the first respondent Society. They cannot be said to be under the control of the Central Govt. In the circumstances, the State Govt. shall have to be held as the appropriate Govt. for the first respondent for the purpose of I.D. Act consequently the MRTU & PULP Act.”

10. In this respect the Ld. Adv. for the second party submitted that, Goa Shipyard is established as per the Central Govt. Rules and it is exclusively controlled by the Central Govt. Therefore the observations in the above rulings are not attracted to the set of facts of the present case. The Ld. Adv. for the second party in this respect further submitted that, in 2010 there is amendment to Section 2 (1) (a) of Industrial Disputes Act. He has produced the gazette notification in respect of the amendment. As per this amendment, for major Port any company in which not less than 51% of paid up share capital is held by Central Govt. and any Corporation not being a Corporation referred to in this clause established by or under any law made by Parliament or the Central Public Sector Undertaking, subsidiary company set by the principle undertaking and autonomous bodies, owned or controlled by the Central Govt. in such circumstances, the Central Govt. shall be the appropriate Govt. In the case at hand the first party is a Shipyard established as per the Central Govt. Act and it is under the control of the

Central Govt. Therefore I hold that in this respect Central Govt. is the appropriate Govt. As central Govt. is held appropriate Govt., this Tribunal has jurisdiction to entertain the reference. Accordingly I decide these issues nos. 1 & 2 in the affirmative.

Issue no. 3:

11. In this respect the Ld. Adv. for the first party raised objection to dispose of the reference on the basis of offer or admission of the first party in the Written Statement. The Ld. Adv. for second party submitted that the attitude of the first party appears to be adamant. It seems that any how they do not want to extend the benefits of settlement to these workmen. There appears substance in the averment of the Ld. Adv. Furthermore the Ld. Adv. submitted that the Tribunal or Court can pass judgment or award under order XII Rule 6 CPC on the basis of admission given in the written statement. For that purpose Court or Tribunal need not waste its time in recording evidence etc. In support of his argument the Ld. Adv. for the second party resorted to Apex Court ruling in Charanjit Lal Mehra & Ors V/s. Smt. Kamal Saroj Mahajan & Anr decided on 11/03/2005 in Special Leave Petition (Civil) 20914 of 2004 wherein the Hon’ble Apex Court referred its earlier judgment in Uttam Singh Duggal & Co. Ltd. V/s. United Bank of India & Ors. (2000) 7 SSC 120 where on the point the Hon’ble Apex Court had observed that ;

“In the objects and reasons set out while amending Rule 6 of Order 12 CPC it is stated that “where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgement at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled.” The Supreme Court should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgement.”

12. In the case at hand the first party in para 28 of its written statement has shown its readiness to extend the benefit of settlement to these workmen on signing the declaration without any amendment. These workmen vide their application Ex-41 have shown its readiness to sign the declaration and to accept the benefits under Settlement. It shows that the first party has shown their readiness to extend the benefit of settlement on signing the declaration. The second party workmen are ready for the same. In this backdrop there is no hurdle in passing the award under order XII Rule 6 CPC. The parties would get speedy remedy by passing the award on admission. Therefore in the light of above observations of Hon’ble Apex Court I think it proper to pass the award without recording evidence etc. as the first party has shown readiness to give the benefits to these workmen and they are ready to accept the same.

13. In this respect the only hurdle pointed out by the first party is that the workmen should accept all the terms of the settlement including Clause no.92.13. In this respect I would like to point out that, settlement has to be accepted as a whole and the workmen cannot be allowed to choose and pick the beneficial terms of the settlement. However clause 92.13 is not integral part of the settlement. In this clause it is mentioned that,

“...this memorandum of settlement will be paid to those employees who had signed the declaration for this purpose and accepted the Memorandum of Understanding signed on 03-08-2009 between the management and Goa Shipyard Kamgar Sangh as well as Negotiation Committee represented by a group of workmen of Goa Shipyard Ltd. and authorised the Goa Shipyard Kamgar Sangh and the Negotiation Committee to sign a settlement under Section 2 (P) read with Section 18 (1) of the I.D. Act. The arrears will be paid on or before 15-9-2009 the revised allowances will be applicable and paid from the date of signing the memorandum of settlement. Employees accepting this memorandum of settlement by signing an undertaking as given at Appendix ‘A’ before 10-9-2009 will be paid arrears on 15-9-2009 and the revised allowance will be applicable w.e.f. the date of signing the undertaking as given at Appendix ‘A’. The employees who signed the undertaking subsequently their arrears will be paid as decided by the management and the allowances will be applicable w.e.f. the first of the succeeding month from the date of signing the undertaking. Advance already paid and/or any excess payment made erroneously in the past or any dues payable by the employee to the company will be recovered from the arrears payable to the workers/employees.”

14. In this respect I would like to point out that giving benefit after signing of the declaration would no doubt amount to injustice to these workmen as their fellow workmen who have signed the undertaking are getting the benefits since 2009. It would affect the valuable right of these workmen to get pay and allowances equal to the members of the union. As these workmen have raised the dispute and are fighting the legal battle, they could not get the benefit of settlement. In the circumstances as per the settled principle of ‘equal work- equal pay’, I come to the conclusion that these workmen should not suffer as they have not signed the declaration earlier. As they are performing the same work, they are well entitled to the pay equal to the co-workers who are members of the union. I do consider the fact that these workmen have not signed the declaration in time and have raised the industrial dispute. Therefore to meet the end of justice I think it proper to direct the first party to extend the benefit of the settlement to these workmen from the date of Order of

Reference. Accordingly I decide this issue no. 3 in the affirmative that on the basis of admission in the pleadings, Award can be passed. Thus I pass the following order:

ORDER

- (i) Reference is partly allowed with no order as to cost.
- (ii) The workmen are directed to sign the declaration at an earliest.
- (iii) After signing the declaration the first party is directed to extend the benefit of settlement to these workmen from the date of Order of Reference i.e. from 01.09.2010.
- (iv) The first party is directed to pay the arrears within three months from the date of signing of the declaration by these workmen.

Date: 09-01-2015

K. B. KATAKE, Presiding Officer

नई दिल्ली, 23 फरवरी, 2015

का.आ. 406.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन टूरिज्म डेवलपमेंट कारपोरेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 1, दिल्ली के पंचाट (संदर्भ संख्या 189/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-02-2015 को प्राप्त हुआ था।

[सं. एल-42011/107/2012-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 23rd February, 2015

S.O. 406.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 189/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Indian Tourism Development Corporation and their workman, which was received by the Central Government on 23-02-2015.

[No.L-42011/107/2012-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT
NO.1, DELHI**

ID No. 189/2012

Shri R.K. Avasthi,
C/o General Secretary,
All India IDC Mazdoor Janta Union,

C-48-49, Staff Quarter,
Ashok Hotel, 50-B, Chanakyapuri,
New Delhi

...Workman

Versus

The Chairman and Managing Director,
Indian Tourism Development Corporation,
6th Floor, 7, Core, Scope Complex,
Scope Building, Lodhi Road,
New Delhi

...Management

AWARD

Background facts giving rise to the present reference petition that a reference was received from the Ministry of Labour, Government of India vide letter No. L-42011/107/2012-IR(DU) dated 07.12.2012, with the following terms of reference:

“Whether the action of management of ITDC New Delhi no providing Special Allowance and Transportation charges to the workman, Shri R.K. Avasthi is legal and justified? If not, what relief the workman is entitled for?”

2. It is clear from perusal of the statement of claim that the workman, Shri R.K. Avasthi, was working with the management of ITDC since 05.12.1979, when he was appointed at Hotel Jaipur Ashok, a unit of ITDC as Chief d’rang and due to his good performance and honesty, he was promoted from time to time. Lastly, he was in the pay scale of Rs.13500-32720 of Sl.Grade Maitred’ Hotel.

3. According to the workman, management of ITDC illegally and unlawfully transferred him from Hotel Jaipur Ashok to Hotel Jammu Ashok just to harass and victimize him without any need as he was the branch secretary of All India ITDC Mazdoor Janta Union, Branch Jaipur. Since he was appointed for Hotel Jaipur Ashok, as such he could not be transferred to any other unit without his request as per the transfer policy signed by the trade union federation in 1980. However, the workman obeyed the orders of the management of transfer order dated 24.04.2009 and joined Jaipur Jammu Ashok on 02.05.2009. Shri Avasthi worked in Hotel Jammu Ashok from May 2009 from where he was again transferred to VIP catering unit, Vigyan Bhawan, New Delhi, a unit of ITDC. It is also averred that the workman was again re-transferred from Vigyan Bhawan unit of ITDC to Hotel Jaipur Ashok vide office order dated 18.08.2011 and joined there on 31.08.2011, which is evident from office order, Ex.WW1/9.

4. The workman has specifically alleged in para 8 of his claim petition that he was entitled to Rs.1,500.00 per month as special allowance on account of his transfer from one state to another, till he worked at Hotel Jammu Ashok, i.e May 2009 to December 2009, and the amount payable comes to Rs.12,000.00. The workman was also entitled for Rs.27,000.00 as transportation but he was paid only Rs.3,888.00. As such his claim for Rs.23,112.00

is still pending with the management. Special allowance payable to the employees working in different states is as per circular No.HRM/SA/081/HQRS/HR/08/24 dated 18.06.2008. Workman also claimed transportation allowance of Rs. 9,080.80 on transfer from Vigyan Bhawan, New Delhi to Hotel Jaipur Ashok. Balance amount of Rs. 6,747.80 still remains to be paid. Workman also filed case through All India ITDC Mazdoor Janta Union after giving proper demand notice dated 29.03.2011 and Conciliation Officer has now referred the matter with the above terms of reference.

5. Claim was contested by the management, who filed written statement hereto. In para 2 of the written statement, it was admitted that the workman was appointed at Hotel Jaipur Ashok and was granted promotion as per rules. In para 3, I is denied that the management of ITDC illegally and unlawfully transferred the workman from Hotel Jaipur Ashok to Hotel Jammu Ashok. It is also denied that he was harassed and victimized as he was branch secretary of All India ITDC Mazdoor Janta Union, Branch Jaipur. Workman was working on transferable job and as per rules of the Hotel, an employee can be posted in any of the units in India as per administrative exigencies and requirements. No immunity is granted to an office bearer of any union and rules apply to all. Moreover, it is the prerogative of the management to transfer an employee from one place to another. Management also denied transfer policy alleged by the workman in para 4 of the claim petition. However, in para 8 of the written statement, it is admitted that as per circular No.HRM/SA/08 dated 18.06.2008 and No. HRM/SA/08/HQRS/HR/08/29 dated 23.06.2008, it has been notified that with effect from 01.06.2008 to consider grant of an incentive by way of officiating promotion to Hotel Executives who would be transferred and posted as Heads of the Units at Stations other than their home state except Bharatpur will be considered as station other than home state.

6. It is also alleged that as per the notification, special allowance of Rs.1,000.00 is payable for those transferred as Unit Head and for other executives Rs.1,500.00 per month. Further, the workman being non-executive, is not entitled to payment of special allowance. Circular specifically provides for special allowance only for executives.

7. Management denies other averments/claims made by the workman.

8. The workman, in order to prove his case, tendered his affidavit in evidence, which is Ex.WW1/A and the depositions contained in the affidavit are on the same lines as made in the claim petition. Workman has also tendered in evidence various documents, including his order of transfer as well as notifications pertaining to the grant of allowances etc. and I would be discussing the same in the subsequent paras.

9. Similarly, management examined Ms. Anshu Sharma, Assistant Manager as MW1, who tendered in evidence her affidavit which is Ex.MW1/A as well as office memorandum dated 08.06.2010, office order dated 06.02.2004, copy of the recruitment and promotion policy as well as other documents from Ex.MW1/1 to Ex.MW1/8. Affidavit of the management is almost on the same lines as has been taken in the written statement.

10. I have heard Shri S.S. Upadhyay, authorized representative of the claimant as well as Ms.Shipra Shukla, authorized representative on behalf of the management and also carefully perused the record of the case.

11. Controversy in the present case lies within a narrow compass. It is neither in doubt nor in dispute that the workman in the case in hand was appointed initially in December 1979 in Hotel Jaipur Ashok, a unit of ITDC as Chief d'rang and from time he was promoted. Lastly, he was in the pay scale of Rs.13,500 to 32,720 of Sl. Grade Maitred hotel.

12. Grouse of the workman is that he was illegally and unlawfully transferred from Hotel Jaipur Ashok to Hotel Jammu Ashok so as to harass and victimize him. He was Secretary of the All India ITDC Mazdoor Janta Union, branch Jaipur. Shri Upadhyay, appearing on behalf of the workman strongly contended that the workman should not have been transferred to any other unit without his request as per transfer policy signed by the Trade Union Federation in 1980. This contention of the workman was strongly refuted by Ms.Anshu Sharma appearing on behalf of the management by urging that it is the prerogative of the employer to transfer an employee from one place to another, as per exigencies of work and so called transfer policy cannot stop or bar an employer in any manner from transferring an employee from one place to another.

13. Further, it is clear from perusal of letter of appointment dated 19.11.1979, Ex.WW1/1 that Shri R.K. Avasthi, workman, herein, was appointed on temporary post of Chef at Hotel Jaipur Ashok. There is also letter dated 21.06.2010, Ex.WW1/2, which shows that time bound upgradation of the workman was done by the management and he was paid in the pay-scale of Rs.7040-11090. There is also office order dated 23.04.2009, Ex.WW1/3 which shows that the workman Shri R.K. Avasthi was transferred from Hotel Jaipur Ashok to Hotel Jammu Ashok. Workman has joined duty on 02.07.2009 as per above order and remained posted there till his further transfer to VIP Catering Unit at Vigyan Bhawan, New Delhi vide order dated 18.08.2011. All these facts were not disputed by either of the parties during the course of arguments. At this stage, it is appropriate to refer to memorandum of settlement under section 81 of the ID Act, 1947, Ex.WW1/4, upon which reliance was placed by the workman. It is clear from clause xx(ii) that inter unit transfers will be regulated in

accordance with the recommendations contained in paras 16 and 17 of Chapter XI of the report. There is also mention in the said order that an employee below the senior operative level as defined in the report shall normally not be transferred but if such a transfer becomes necessary in the commercial/operational interest of the Corporation, they will be transferred only to a unit within the Region. There is a lot of force in the contention of the workman that normally a workman, in view of the above policy, cannot be transferred unless there are some commercial/operational reasons to transfer an employee. It is also appropriate to refer to the statement of Ms. Anshu Sharma, MW1, who in her cross-examination has admitted that office order Ex.WW1/M1 was issued unilaterally without any consultation with the trade union. She further admitted that certified standing orders for Hotel Jaipur Ashok is different from the certified standing orders of the other units of ITDC. She further deposed that services of Sri R.K. Avasthi, workman, herein were transferred to Jammu Ashok Hotel at the request of the Hotel and as such the request was orally made by the General Manager, Jammu Ashok Hotel. I am of the view that when there is a policy not to transfer normally such employees from one place to another, request should have been made in writing by the Hotel to the management. It has also come in the pleadings as well as evidence of this witness that Shri R.K. Avasthi was Secretary of ITDC Mazdoor Janta Union. Further, there was no demand from Bharatpur unit of ITDC for transferring services of Shri Avasthi. Thus, it is clear that the management has been transferring the workman in a whimsical manner without following any norm or guidelines in this regard. It has been held in the case of Umesh Kumar Sharma Vs. State of Himachal Pradesh (2014 LLJ 3648) that when transfer of an employee is not in violation of the statutory provisions or regulations, the court will not interfere in the same unless from the record it is established that such a transfer is made in a malafide manner or is against the policy of transfer. Since in the case in hand, issue of transfer is no more in controversy as workman has retired on 30.09.2014, as such, question of malafide transfer of the workman pales into insignificance. The only vital question is whether the workman is entitled to the claim of special allowance and transportation charges as claimed.

14. Ms. Shipra Shukla, authorized representative appearing on behalf of the management strongly urged that that workman herein is not entitled to the special allowance as well as transportation charges, as claimed, in view of office order dated 06.02.2008, Ex.MW1/2:

“1 The following will be treated as a single unit for the purpose of appointment, seniority, promotion and reversion and retrenchment:

- | | |
|----------------------|------------------|
| a. Senior Executives | India and abroad |
| b. Executives | India and abroad |
| c. Non-Executives | India |

- II The Senior Executives and Executives are liable to be posted anywhere in India and abroad depending upon exigencies of work.
- III All Non-Executives are liable to be transferred anywhere in India from one unit to another unit of the Corporation, including HCE units to Corporate Office/Regional Offices and vice versa due to exigencies of work.

However, in case non-executives are transferred from one Unit to another Unit, their seniority shall be protected.

Note : Unit means any Unit of Hotel Catering Establishment/Regional Office/Corporate Office etc.”

15. Ms.Sharma also urged that since relief of special allowance etc. is only available to the Executives and the workman herein being non-Executive is not entitled to the relief/allowances on account of his transfer. In this regard, attention of this court was also invited to memorandum dated 28.12.2010, which reads as under:

‘Payment of special allowance: As per Circular No.HRMS/SA/08/Hqrs/HR/08/29 dated 23.06.2008, special allowance/incentive @ 1500 per month is admissible to the Employees who are transferred to cities other than their home state, in one Unit of different units, with the exception of Units at Bharatpur and Kaziranga. In the above mentioned circular, the term ‘employee’ for the purpose of Special Allowance has been confined to executives only and therefore your request for payment of special allowance cannot be entertained.’

16. Whereas Shri Upadhyay, appearing on behalf of the claimant, urged that when Shri N.D. Gupta, who was transferred from Hotel Jaipur Ashok to Hotel Bharatpur Ashok was granted special allowance of Rs.1,500.00, then there is no reason or legal basis to deny the benefit of special allowance and transportation charges etc. to the workman. In this regard, strong reliance was placed upon the judgement of Hon’ble High Court of Rajasthan, i.e. D.B. Civil Special appeal Writ Petition No.1277 of 2013 titled ‘Indian Tourism Development Corporation Ltd. and others vs. Narain Das Gupta’, decided on 21.02.2014, wherein similar question came up for consideration before the Division Bench of the High Court. In the said case, workman was initially granted House Rent Allowance(HRA) in terms of office memorandum dated 12.09.2007. However, the same was later on withdrawn and notice was issued for recovery of the same amount, to the workman. It was also strongly urged on behalf of the management that the benefit of the circular/office order dated 12.09.2007 can only be given to officials holding executive post and to workman/employees who are holding non-executive post. This contention of the management was rejected by the High Court and it was held as under:

“We have heard counsel for the parties and also perused order of the learned Single Judge and the material which has come on record and we do find substance in the submission made by counsel for respondent employee that as regards the office order dated 12.09.2007, it relates to the employees who are transferred to smaller cities and indisputably all who are working from Class IV to the highest post in the organization are employees of the Corporation and the office order dated 12.09.2007 is applicable to the employees in general and the later circulars which are issued in the form of clarification dated 18.06.2008 and 23.06.2008 confines to the hotel executives and not to the employees in general and they are entitled to claim HRA in the exigencies referred in the office order dated 12.09.2007 and as regards recovery, if the amount has been paid towards HRA in terms of order dated 12.09.2007 being employee of the corporation, the question of recovery, in our considered view, does not arise as has rightly been paid to him to which he is entitled for under the law and after going through order of the learned Single Judge impugned herein, we do not find any apparent error which may require interference by this court.

Consequently, the appeal is devoid of merit and accordingly dismissed.”

16. It is, thus, clear from the ratio of the above judgement that the benefit of special allowance as well as transportation charges is to be paid to all kinds of employees when they are transferred from one place to the other (beyond 20 kms.).

17. It is clear from perusal of the record that Shri R.K. Avasthi, workman herein, in view of his transfers, as discussed above, has submitted vide Ex.WW1/7, which is as under:

	Amount Claimed	Amount Paid
Two rail tickers (from Jammu to Delhi)	Rs.1,775.00	Rs.1,775.00
Conveyance Charges (From Jammu residence to Jammu Station)	Rs. 180.00	Rs. 180.00
Conveyance Charges From Delhi Station to Residence	Rs. 250.00	Rs. 250.00
Transportation charges of 400 kg (as per toll slip) Goods by road (Full truck charges) from Jammu to Delhi	Rs. 27,000.00	Rs. 3,682.00
Toll Charges (Jammu)	Rs. 240.00	—

Composit transfer grant — Rs. 23,125.00
(DA+DP+FDA) equal to
one month salary

Rs. 29,445.00 Rs. 29,012.00

18. It is clear from perusal of the above that the workman was not given transportation charges in the manner being claimed by him to the tune of Rs. 27,000.00 and only an amount of Rs. 3,682.00 was paid to him. Authorized representative on behalf of the management could point out any infirmity in the bill Ex.WW1/7. Thus, deduction in the above bill made by the management is not in consonance with law and particularly in view of the ratio of the law in Narain Das Gupta (supra), employees holding non-executive posts are entitled to special allowance and transportation charges.

19. As a sequel to my discussion hereinabove, it is held that the workman Shri S.K. Avasthi is entitled to special allowance as well as transportation charges, details of which are given in Ex.WW1/7 from the respondent management. He is also entitled to interest at the rate of 9% per annum from the date when this amount became due to him and same was wrongly denied to him. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : February 10, 2015

A. C. DOGRA, Presiding Officer

नई दिल्ली, 23 फरवरी, 2015

का.आ. 407.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमिश्नर म्युनिसिपल कारपोरेशन ऑफ दिल्ली के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 1, दिल्ली के पंचाट (संदर्भ संख्या 84/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/02/2015 को प्राप्त हुआ था।

[सं. एल-42011/36/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 23rd February, 2015

S.O. 407.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 84/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Commissioner, Municipal Corporation of Delhi and their workman, which was received by the Central Government on 23/02/2015.

[No.L-42011/36/2010-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 1, DELHI

ID No. 84/2012

Shri Inder Pal,
S/o late Shri Tika Ram,
Through MCD General Mazdoor Union,
Room No. 95, Barack No.1/10,
Jam Nagar House,
New Delhi

...Workman

Versus

The Commissioner,
Municipal Corporation of Delhi
Town Hall, Chandni Chowk,
Delhi

The Commissioner,
Udyog Sadan,
Near Patparganj,
Shahdara

...Management

AWARD

Reference in the present case was received from the appropriate Government, viz. Ministry of Labour and employment, vide order No. L-42011/36/2010-IR(DU) dated 05.07.2012 for adjudication of the industrial dispute with following reference:

“Whether the action of the management of MCD in not granting the pay scale of Rs. 3050-4590 to Shri Inder Pal Singh with effect from 21.03.1996 in the post of Garden Chaudhary is justified or not? If not, what relief the workman is entitle to?”

2. It is clear from perusal of the statement of claim that the workman, Shri Inder Pal, was initially posted as mali under Shahdara North, Horticulture Division and thereafter transferred to Karol Bagh Zone of Horticulture. It is also submitted that after bifurcation of the Municipal Corporation of Delhi, the Commissioner office of East Nagar Nigam is situated at Udyog Sadan, Near Patparganj, Shahdara. Details of the workman, Shri Inder Pal Singh is mentioned in para 4 of the statement of claim as under:

Date of employment on muster roll mali	Date of regularization as mali	Date of employment as Chaudhary/ officiating Chaudhary
1985	01.04.1994	21.03.1996

3. It is specifically averred in para 5 of statement of claim that the workman has been performing the work of Garden Chaudhary with effect from 21.03.1996 and is posted at Swami Dayanand Hospital under Shri Shashi

Kant Sharma, Sectional Officer, Shri Narpat Singh, Assistant Director (Horticulture) and Shri Ranbir Singh, Deputy Director of Shahdara North Zone. However, he has been denied pay scale of Chaudhary as revised from time to time. The workman has been performing duty of Chaudhary till date even after transfer from one Zone to the other. Name of the workman is also appearing in Annexure A at serial No. 2 as per office documents prepared by the management.

4. There are averments that MCD has fixed pay scales of other employees, including malis, Chaudhary etc. and non-grant of proper pay scale of Chaudhary to the workman, Shri Inder Pal Singh is 'forced labour' and thus amounts to unfair labour practice. In fact, the workman Shri Inder Pal Singh has got payment in lower scale of Rs. 2550-3200 revised from time to time and has been denied time scale of Garden Chaudhary Rs. 3050-4590, which duty he performed since 21.03.1996.

5. It is also averred that Hon'ble High Court of Delhi in the matter of Jai Chand vs. MCD has directed payment of wages of Garden Chaudhary to those malis who are performing work of Garden Chaudhary vide its order dated 02.05.2003 and in compliance of the said order, management has issued office order No. ADC(Hort)/AO(Hort)/DA-VII/05/457 dated 04.03.2005, Annexure B. There is also reference to the judgement of Hon'ble High Court of Delhi in the case of MCD versus Sultan Singh and others dated 27.07.2011, wherein Hon'ble High Court under similar circumstances while considering question of payment of wages of Garden Chaudhary to those malis who are performing duties and functions of Garden Chaudhary, held that such malis be paid the difference in pay of mali and Garden Chaudhary. The said judgement was also challenged before the Hon'ble Supreme Court of India by filing S.L.P., which was dismissed as withdrawn by the management. Management is now duty bound to pay wages to the workman in the scale of Chaudhary with effect from 21.03.1996.

6. Claim was contested by the management, who filed written statement, taking preliminary objections inter alia, maintainability, non-service of demand notice etc. It was also alleged that the workman has never performed duties of Garden Chaudhary, as such he cannot be regularized/promoted to the post of Garden Chaudhary. There is a process for promotion to the said post. There must be sanctioned post/vacant post of Garden Chaudhary and apart from that the workman should have requisite academic qualification of matriculation with agriculture as one of the subjects. Since the claimant is simply 8th pass and has never passed trade test, as such, his claim is misconceived and contrary to the provisions of rules. Reference was also opposed on grounds of delay and laches etc. On merits, material averments contained in the claim petition were denied. It was clarified that MCD stood trifurcated into three Corporations, North Delhi

Municipal Corporation, South Delhi Municipal Corporation and East Delhi Municipal Corporation and these are independent identity. It was specifically denied that the claimant was allotted work of Garden Supervisor with effect from 21.03.1996. Management also denied the other material averments contained in the statement of claim.

7. The workman, Shri Inder Pal Singh, in support of his case, examined himself as WW1 and Shri B.K. Prasad as WW2 and also tendered in evidence some document alongwith judgements. I would be referring to the same while drawing my conclusion.

8. Management, in order to rebut the case of the workman, examined Shri Ravinder Kumar, Assistant Director (Horticulture), East Delhi Municipal Corporation as MW1. It is clear from perusal of his affidavit that the management has specifically alleged that the workman has never performed duties as Garden Supervisor and no such order by any competent officer was issued.

9. I have heard Shri B.K. Prasad, A/R for the claimant and Shri Vishwajit Mangla, A/R for the management.

10. Before I proceed to consider the comparative merits of the claim made by either of the parties, it is necessary to mention here that it was not denied that the workman Shri Inder Pal Singh was initially working as mali and from time to time he was transferred. This fact is also duly established from the copy of office order Ex.WW1/1 wherein name of the workman Shri Inder Pal Singh finds mention at serial No. 2.

11. The only moot point which is required to be considered in the case in hand is whether the workman has been working on the post of Garden Chaudhary since March 1996 and entitled to wages of Garden Chaudhary, as alleged in the statement of claim. In this regard, it is appropriate to refer to the statement of the workman, Shri Inder Pal Singh, examined himself as WW1 and tendered in evidence his affidavit as Ex.WW/A. He has also tendered in evidence Office Order/documents Ex.WW1/1 and Ex.WW1/2 and deposed that both these documents may kindly be read in evidence. Workman was cross examined twice. However, there is nothing in the cross examination of the workman so as to show that management has disputed the validity of the office order Ex.WW1/1. It is crystal clear from perusal of the report dated 15.06.2005, which is duly signed by three different officials of Horticulture Department, name of the workman, Shri Inder Pal Singh is at Serial No. 2 and his designation is shown as Mali since 1996. Total number of workman shown in the list is

12. No doubt, the management in paras 4 and 5 of the written statement denied that the claimant was allotted work of Garden Supervisor with effect from 21.03.1996. However, the workman in his cross examination (27.06.2013) has deposed that in the year 1997, he

demanded wages for the post of Garden Chaudhary though he is not in a position to give any proof of the same.

13. Shri Ravinder Kumar, Assistant Director was examined as MW1 by the management, who tendered his affidavit, Ex.MW1/A. Concededly, the statement of Shri Ravinder Kumar was recorded after deposition of Shri Inder Pal Singh and nowhere has the management contested validity of the report Ex.WW1/1. This witness has feigned ignorance regarding raising of industrial dispute by the other workman, such as Kanwar Singh, Satender Singh etc. He was also not aware of the fate of the writ petition which was dismissed on 28.07.2011 wherein similar question of grant of wages of a mali who was working as Garden Supervisor was involved. The statement of this witness is not of much importance as to whether the workman was doing the work of Garden Chaudhary since 1996 in as much as this official was posted in Shahdara North Zone only in the year 2005. Moreover, no record has been produced by the management in respect of the malis/ chowkidars who were performing duties of Garden Chaudhary. It is further evident from his statement that the management had filed writ petition against the award of the Tribunal, which was dismissed by the Hon'ble High Court. Since this witness was not in a position to specifically affirm as to whether Shri Inder Pal Singh was working with the management since 01.03.1996 as such he sought further time to answer the above question, which was granted to him by my learned predecessor.

14. Even on the subsequent dates of hearing, (20.11.2013), Shri Ravinder Kumar, MW1 stated that Shri Inder Pal Singh was working with the management since 21.03.1996. He has not stated specifically that the workman was simply working as mali and was not performing duties of Garden Supervisor. Being a responsible official, his statement should have been very categorical and specific so far as question of job of mali or Garden Supervisor was concerned. He has also admitted that award Ex.MW1/W1 was passed in favour of Shri Kanwar Singh by the Industrial Tribunal, NCT of Delhi and Hon'ble High Court of Delhi vide its order dated 28.07.2011 has affirmed the said award. It is clear from perusal of the award dated 04.02.2010(Ex.MW1/W1) that MCD General Mazdoor Union raised a dispute as to whether the workman Shri Kanwar Singh was allotted the duty of Garden Supervisor by the management and as such he is entitled to be regularized in the service of Garden Chaudhary or not. It is further clear that the said workman was doing the work of Garden Chaudhary since December 1998 till date and was getting salary in the lower time scale of mali, i.e. Rs.2550-3200. The stand of the management in the said case was the same as is in the case in hand. It was alleged that the post of Garden Chaudhary is a promotional post from the post of mali, for which requirement is qualifying of trade test as well as minimum qualification of matriculation.

15. After considering evidence on record, the Tribunal, in its award dated 04.02.2010 (Ex.MW1/W1), held that the workman was allotted duties of Garden Chaudhary, as such was entitled to pay scale of Garden Chaudhary from the time when the workman was performing the said job. Workman was held not entitled to be regularized or promoted as Garden Chaudhary as the workman lacked requisite qualification. The above award was challenged before the Hon'ble High Court of Delhi and the award of the Tribunal was upheld vide judgement dated 27.07.2011 in WP© No.7947/2010 titled 'MCD versus Sultan Singh & Others'. Operative portion of the judgement of Hon'ble High Court, relevant in the context of the present controversy, is as under:

"28. Considering the entire facts and circumstances it is apparent that the claim of the respondents have always been that they should be paid the difference in pay of Mali/Chowkidar and the Garden Chaudhary as they were made to work on the post of Garden Chaudhary whereas the petitioner had first denied that they worked as Garden Chaudharies, then took the plea that the Assistant Director (Horticulture) was not competent to ask the respondents to work as Garden Chaudharies and that the respondents cannot be appointed to the post of Garden Chaudharies in accordance with the recruitment rules. There is no doubt that respondents are not claiming appointment to the post of Garden Chaudharies on account of having worked on ad-hoc basis on the post of Garden Chaudhary contrary to rules or that some of them not having the requisite qualifications are entitled for relaxation.

29. In the entirety of facts and circumstances therefore, the learned counsel for the petitioner has failed to make out any such grounds which will impel this Court to exercise its jurisdiction under Article 226 of the Constitution to set aside the orders of the Tribunal dated 29th January, 2010 and 7th October, 2010 as no illegality or un-sustainability or perversity in the orders of the Tribunal has been made out.

30. The writ petition is, therefore, dismissed. Parties are left to bear their own cost."

16. During the course of arguments, it was not denied that the above judgement of the Hon'ble High Court was also challenged before the Hon'ble Supreme Court by way of SLP, which was dismissed as withdrawn on 09.04.2012. Situation in the case in hand is in no way different from the above cited case. In that case also, workman in fact was mali and was performing duties of Garden Supervisor and as such was entitled to wages of Garden Chaudhary on account of having worked on adhoc basis on the said post.

17. Thus, there is no merit in the contention of the A/R for the management that the workman, Shri Inder Pal, is

not having requisite qualification and as such there is no question of his being considered for the post of Garden Chaudhary. Here, the workman is not claiming promotion to the post of Garden Chaudhary. He is simply claiming difference of wages to which he is entitled on account of having worked on the above post sine March 1996. Management did not produce any record or any other independent evidence so as to show that the workman in the case in hand never worked on the post of Garden Supervisor so as to deny him benefit of wages of Garden Chaudhary.

18. During the course of arguments, much reliance was also placed by the workman upon the case of MCD vs. Satender Singh, decided by the Hon'ble High Court of Delhi vide judgement dated 20.03.2012 wherein also similar question was involved. A careful appraisal of the judgement shows that the Hon'ble High Court has observed that since the matter is squarely covered by a judgement dated 20.04.2011 of a Division Bench of High Court in 'MCD vs. Sultan Singh and others', as such same relief can be given to the respondents(workmen).

19. Law is fairly settled that if a person is working on a higher post, on adhoc or temporary post, then such an employee is entitled to the salary/wages of such higher post unless rules or regulations provide otherwise. I find support to this view of mine from the case of Secretary vs. Lieutenant Governor Port Blair (1998 Lab.I.C. 598).

20. There is no merit in the contention of the management that documents Ex.WW1/1 cannot be taken into consideration, being photocopy of the original. I have carefully gone through the said document which has been issued by the management on 15.06.2005 as Annexure A. No doubt it is settled proposition of law that mere production and marking of documents as exhibit by the court cannot be held to be due proof of its contents. Its execution is to be proved by admissible evidence. Situation is however different where documents are produced and their genuineness is not disputed by the opposite party when they are tendered in evidence or when they are marked as exhibits. I am fortified in my opinion from the case of RVE Venkatachala Gounder versus A.V.V.P. Temples (AIR 2003 SC 4548). This was a case where the Hon'ble Apex Court dealt at length with the question of mode of proof and admissibility of documents and after considering entire case law on the subject, it was held as under:

“An objection to the admissibility of the document should be raised before such endorsement is made and the Court is obliged to form its opinion on the question of admissibility and express the same on which opinion would depend the document being endorsed as admitted or not admitted in evidence. In the latter case, the document may be returned by the Court to the person from whose custody it was produced.

Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes:- (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit.”

21. The same view appears to have been taken in the case of Narbada Devi Gupta versus Birendra Kumar Jaiswal (AIR 2004 SC 175). In view of the ratio of law discussed above, it is clear in the present case that no objection was taken by the management(i.e. opposite party) when workman while appearing as WW1 tendered photocopy in evidence. Now, it is too late in the day to urge that the above document, i.e. Ex.WW1/1, original of which is obviously in possession of the management, has not been proved in accordance with law. Since at no point of time validity of this document was questioned during the course of evidence, as such, contention of the management deserves to be rejected.

22. Similarly, reference petition cannot be rejected on the grounds of delay and laches though the workman has not approached the appropriate Government or the management at the earliest regarding grant of pay sale of Garden Chaudhary. Legitimate claim of a poor workman cannot be rejected or defeated on such trivial grounds. Moreover, the Hon'ble Apex Court in the case of Raghubir Singh versus General Manager Haryana Roadways(2014 Lab.I.C. 4266) while dealing with the question of limitation held that a reference under Section 10 of the Industrial Disputes Act can be made by the Government at any time and such a reference cannot be rejected by the Industrial Tribunal on grounds of delay in as much as it is necessary to keep in mind the provisions of Section 10, which clearly uses the word 'at any time'. Section 10(1) of the Act enables the appropriate Government to make reference of any industrial dispute which exists or is apprehended at any time to one of the authorities mentioned in the said section. How and in what manner or through what machinery the Government is apprised of the dispute is hardly relevant.

Only requirement for taking action under Section 10(1) of the Act is that there must be some material before the Government which will enable the appropriate Government to form an opinion that an industrial dispute exists or is apprehended. This is the administrative function of the Government and the Government is at liberty thereafter to make reference to the Industrial Tribunal.

23. As a sequel to my discussion made hereinabove, it is held that the workman Shri Inder Pal was doing the work of Garden Supervisor since 21.03.1996 and from that date he is entitled to the wages of Garden Chaudhary and as a corollary, management is liable pay the difference of wages of mali vis-a-vis Garden Chaudhary from the date when the workman herein was performing duties and functions of Garden Chaudhary. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : February 18, 2015

A. C. DOGRA, Presiding Officer

नई दिल्ली, 24 फरवरी, 2015

का.आ. 408.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, दिल्ली के पंचाट (संदर्भ संख्या 63/12) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24/02/2015 को प्राप्त हुआ था।

[सं. एल-40012/39/2011-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 24th February, 2015

S.O. 408.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 63/12) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 24/02/2015.

[No.L-40012/39/2011-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, KARKARDOOMA, DELHI

Present:- Shri Harbansh Kumar Saxena

ID No.63/12

Sh. Amar Phool,
S/o Sh. Prabhati Lal,
R/o- Hudda Market,
Sector-29,
Faridabad.

Versus

The General Manager,
Bharat Sanchar Nigam Limited
Sector-15,
Faridabad.

NO DISPUTE AWARD

The Central Government in the Ministry of Labour vide notification No.L-40012/39/2011-IR(DU) dated 25.1.2012 referred the following Industrial Dispute to this Tribunal for adjudication :-

“Whether the action of the Management of BSNL, Faridabad in terminating the services of Sh. Amar Phool S/o Sh. Prabhati Lal, Ex-Cable Jointer, w.e.f. 23.08.2010, is legal and justified. What relief the workman is entitled to?

On 14.02.2012 reference was received in this tribunal. Which was register as I.D No. 63/12 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant Sh. Amar Phool not filed claim statement but management in response to reference filed written comments. Wherein it mentioned as follows:-

1. That there exists /existed no relationship of employer and employee between the workman and the management. The workman/claimant had never been taken into employment by the respondent/management at any point of time. The respondent has sufficient staff of Group C and D and, therefore, the respondent department does not engage daily wagers for any work. If any petty work is to be done then that work is done through the contractors engaged by the respondent. A list of contractors engaged by the respondent /department is as under:-

Name of Contractor	Period
1. M/s. Keshav Security Service	31.08.1998 to 30.08.1999
2. M/s. Laxman Security Service	31.08.1998 to 30.08.1999
3. M/s. Om Prakash Bhulania	1.02.2001 to 31.01.2002
4. M/s. Keshav Security Service	2.02.2001 to 1.02.2002
5. M/s. Keshav Security Service	21.10.2002 to 20.10.2003

6. M/s. Anirudh Security Service 2.09.2002 to 15.09.2004
7. M/s. Keshav Security Service 1.08.2003 to 31.07.2004
8. M/s. Keshav Security Service 23.03.2005 to 31.08.2008
9. M/s. Kishan Singh and Associates 1.11.2007 to 31.10.2008
10. M/s. Kishan Singh and Associates 1.02.2009 to 31.01.2010
11. M/s. Keshav Security Service 1.08.2010 to 31.07.2011
12. M/s. Mgarock Security Service 11.09.2006 to 10.09.2007

2. That the workman has no locus standie to file the instant claim before this Hon'ble Tribunal.

3. That the workman /claimant has not come before this Hon'ble Tribunal with clean hands and he has filed the false and fabricated claim before this Hon'ble Tribunal.

It is, therefore, respectfully prayed that in view of above submissions, the claim of the workman may be dismissed with costs.

On the basis of non-interestedness of workman. The proceeding of this case is not liable to be proceeded further. Hence proceedings of the case are liable to be dropped and no dispute award is liable to be passed.

No Dispute Award is accordingly passed.

Dated:-4.2.2015

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 24 फरवरी, 2015

का.आ. 409.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, दिल्ली के पंचाट (संदर्भ संख्या 35/12) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24/02/2015 को प्राप्त हुआ था।

[सं. एल-40012/78/2011-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 24th February, 2015

S.O.409.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 35/12) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in

relation to the management of the Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 24/02/2015.

[No. L-40012/78/2011-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT-II, DELHI

Present:- Shri Harbansh Kumar Saxena

ID No. 35/12

Sh. Sunil Kumar,
S/o Sh. Mewa Lal,
R/o- H.No. -250, Gali No.-2
Rahul Colony, NIT,
Faridabad.

Versus

The General Manager,
Bharat Sanchar Nigam Limited.
Sector-15,
Faridabad.

NO DISPUTE AWARD

The Central Government in the Ministry of Labour vide notification No. L-40012/78/2011-IR(DU) dated 05.12.2011 referred the following Industrial Dispute to this Tribunal for adjudication :-

“Whether the action of the Management of BSNL, in terminating the services of Sh. Sunil Kumar S/o Sh. Mewa Lal, Ex-Cable Jointer, w.e.f. 23.08.2010, is legal and justified. What relief the workman is entitled to?

On 20.01.2012 reference was received in this tribunal. Which was register as I.D No. 35/12 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant Sh. Sunil Kumar not filed claim statement but management in response to reference filed written comments. wherein it mentioned as follows:-

1. That there exists /existed no relationship of employer and employee between the workman and the management. The workman/claimant had never been taken into employment by the respondent/management at any point of time. The respondent has sufficient staff of Group C and D and, therefore, the respondent department does not engage daily wagers for any work. If any petty work is to be done then that work is done through the contractors

engaged by the respondent. A list of contractors engaged by the respondent /department is as under:-

Name of Contractor	Period
1. M/s. Keshav Security Service	31.08.1998 to 30.08.1999
2. M/s. Laxman Security Service	31.08.1998 to 30.08.1999
3. M/s. Om Prakash Bhulania	1.02.2001 to 31.01.2002
4. M/s. Keshav Security Service	2.02.2001 to 1.02.2002
5. M/s. Keshav Security Service	21.10.2002 to 20.10.2003
6. M/s. Anirudh Security Service	2.09.2002 to 15.09.2004
7. M/s. Keshav Security Service	1.08.2003 to 31.07.2004
8. M/s. Keshav Security Service	23.03.2005 to 31.08.2008
9. M/s. Kishan Singh and Associates	1.11.2007 to 31.10.2008
10. M/s. Kishan Singh and Associates	1.02.2009 to 31.01.2010
11. M/s. Keshav Security Service	1.08.2010 to 31.07.2011
12. M/s Mgarock Security Service	11.09.2006 to 10.09.2007

2. That the workman has no locus standie to file the instant claim before this Hon'ble Tribunal.

3. That the workman /claimant has not come before this Hon'ble Tribunal with clean hands and he has filed the false and fabricated claim before this Hon'ble Tribunal.

It is, therefore, respectfully prayed that in view of above submissions, the claim of the workman may be dismissed with costs.

On the basis of non-interestedness of workman. The proceeding of this case is not liable to be proceeded further. Hence proceedings of the case are liable to be dropped and no dispute award is liable to be passed.

No Dispute Award is accordingly passed.

Dated : 4.2.2015

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 24 फरवरी, 2015

का.आ. 410.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुख्य निर्माण अभियंता (आर एंड डी) डीआरडीओ लिमिटेड के प्रबंधन के संबद्ध

नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, दिल्ली के पंचाट (संदर्भ संख्या 55/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24/02/2015 को प्राप्त हुआ था।

[सं. एल-14012/15/2008-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 24th February, 2015

S.O. 410.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 55/2008) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Chief Construction Engineer (R&D), MP, DRDO and their workman, which was received by the Central Government on 24/02/2015.

[No.L-14012/15/2008-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, DELHI

Present:- Shri Harbansh Kumar Saxena

ID No. 55/2008

Sh. Om Prakash, S/o Late Sh. Ram Phool,
R/o House No. 4/272b, Dakshin Puri,
Sector IV, Dr. Ambedkar Nagar,
New Delhi-110062

Versus

The Chief Constructions Engineer (R & D),
MP, DRDO, Development Enclave,
Rao Tula Ram Marg,
Behind Army Head Quarter Camp,
P.B. No.8 Delhi Cantt., Delhi.

AWARD

The Central Government in the Ministry of Labour vide notification No. L-14012/15/2008-IR(DU) dated 1.12.2008 referred the following Industrial Dispute to this Tribunal for adjudication :-

“Whether the action of the management of the Chief Construction Engineer (R & D) MP, DRDO, Development Enclave, Rao Tula Ram Marg, Behind Headquarters Camp, Post Bag No.8, Delhi Cantt, Delhi in terminating the services of Sh. Om Prakash, Ex-helper w.e.f. 30.06.1999 is just, fair and legal? If not, to what relief the workman is entitled to?

On 10.12.2008 reference was received in this Tribunal. Which was register as I.D No. 55/08 and claimant was called upon to file claim statement with in fifteen days from

date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

Workman filed claim statement on 2.2.2009. Wherein he prayed as follows:-

It is, therefore, humbly prayed that an award may kindly be passed in favour of the applicant /workman by issuing orders for re-instatement of the workman in service along with full back wages and consequential benefits and justice shall be provided to the applicant/workman so he can earn his livelihood for his family.

Against claim statement management filed written statement on 06.07.2009. Wherein management prayed as follows:-

It is, therefore more respectfully prayed before this Court that in light of the aforesaid facts the present reference application moved by the alleged applicant be dismissed in limine itself against the alleged applicant in order to cut short the unwarranted ordeal at the hands of the disgruntled and misguided applicant and in the utmost interest of justice and fair play.

Against written statement workman filed rejoinder on 08.02.2010. Wherein workman reaffirmed the contents of Claim statement and prayed as follows:-

It is, therefore, most respectfully prayed that the statement of claim of the applicant /claimant may kindly be allowed with costs throughout. Any other relief or further to which the applicant/claimant is entitled or this Hon'ble Court deems fit and proper be passed.

My Ld predecessors has not framed any issue but proceed to adjudicate the present reference on the basis of schedule wherein questions of determination were as follows:-

“Whether the action of the management of the Chief Construction Engineer (R & D) MP, DRDO, Development Enclave, Rao Tula Ram Marg, Behind Headquarters Camp, Post Bag No.8, Delhi Cantt., Delhi in terminating the services of Sh. Om Prakash, Ex-helper w.e.f. 30.06.1999 is just, fair and legal? If not, to what relief the workman is entitled to?

Workman in support of its case filed his affidavit. Wherein he mentioned as follows:-

1. That the deponent is the workman /claimant in the above mentioned Petition and fully conversant with the facts and circumstances of the case, and as such she is competent to swear this affidavit.

2. That the deponent states that the claimant was appointed as a helper in the above mentioned office vide appointment letter no. Admin /1128/OP/CCE (R&D) MP dated 25th July, 1995, since then the claimant had been working properly, satisfactorily and obeying to the superior officers and had not given any chance of complaint.

3. That the deponent states that the claimant could not attend his duty since 8th July, 1998 because the mother of the claimant namely Mrs. Kasturi was serious ill and was treated from Orthnonva Institute of Advance surgery and Research TCML House No. 23, Pusa Vihar, Community Centre, Delhi- 110062, hence the claimant was looking after his mother in this connection the claimant had informed to the office.

4. That the deponent states that the father of the claimant Sh. Ram Phool has also expired 08.08.1998 since then the claimant was facing many problems and was not in a position to attend his duty due to heavy shock of the death of his father and serious illness of his mother along with the wife of the claimant is also ill. The claimant due to continuous illness of his family members he gone under depression.

5. That the deponent states that the claimant was permanent in the office of the respondent and has been terminated from her service on 21.05.1999.

6. That the deponent states that the termination of service of the claimant was unlawful and illegal and unjust and without adopting the due process of law. The claimant did not given any sufficient opportunity to defend himself nor any show cause notice was ever served upon him. The termination of service of the claimant is against the law and constitution of India. Since, the termination of services of the claimant not only the claimant has been suffering but also suffering his entire family and dependent.

7. That the deponent states that the claimant has been regularly visiting the officer of the respondent regarding his reinstatement in the services but the respondent have linger on the matter on one pretext or the other.

8. That the deponent states that the present notice be treated in continuation to the earlier legal notice dated 23.08.2006. It is pertinent to mention herein that the notice was duly served upon the management /respondent but the respondent has not replied for the same. Thereafter the workman also sent a reminder notice in continuation of the notice vide reminder dated 21.2.2007, which was also served upon the respondent but again they did not respond to the same.

9. That the application /workman is a family man and there is no other source of income except this job. So after termination, the applicant /workman had been regularly appear on the respondent and demanded from the management for his reinstatement but the applicant /workman was not allowed to enter in the premises. Hence the applicant /workman presented the present Petition before the Hon'ble Court of labour commissioner Central Govt. New Delhi.

10. That the workman had filed a case before the Ministry of Labour, Shram Mantralaya Govt. of India /Bharat Sarkar

and after considering all the facts and circumstances of the case, the desk officer of the above said authority has passed an order thereby holding that “an dispute exists between the employee in relations to the management of MP, DRDO and their workman in respect of the matter specified in the schedule hereto annexed. “The authority after exercising the power conferred by clause (d) of sub section (1) and sub section 2(a) of section 10 of the ID. Act 1947 referred the above said dispute for deciding the following issue:

“Whether the action of the management of the Chief Construction Engineer (R & D) MP, DRDO, Development Enclave, Rao Tula Ram Marg, Behind Headquarters Camp, Post Bag No.8, Delhi Cantt, Delhi in terminating the services of Sh. Om Prakash, Ex-helper w.e.f. 30.06.1999 is just, fair and legal? If not, to what relief the workman is entitled to?

11. That the act of the management is illegal and unconstitutional and termination of the services of the applicant/workman and neither paid the earned salary and nor paid the funds and other consequential benefit to the applicant/workman.

12. That the deponent states that deponent has filed certain document in regard to prove his claim. The letter dated 01.12.2008 referring the dispute to the Hon'ble Court for adjudication is Ex. As WE-1/1. The copy of the various legal notices dt. 21.11.2006, 16.01.2007, 21.2.2007, 23.08.2006 alongwith the postal receipts are Ex. WE1/2 (Colly). The copy of the medical records of the wife of the workman/claimant is Ex. WE1/3(Colly). The copy of the medical records of the mother of the claimant/workman are Ex. WE-1/4 (Colly). The copy of the bill receipts of payment of Smt. Asha and Smt. Kastauri Devi, wife and mother of the claimant/workman are Ex. WE1/5 (Colly). The copy of various letter issued by the claimant to the respondent/opposite party dt. 15.12.2007, 31.12.2007, 15.12.2007, 9.5.99, are Ex. WE-1/6 (Colly). The copy of letter issued by the respondent to the petitioner dt. 23.2.99, 30.06.99 are Ex. WE-1/7 (Colly). The copy of the Identity card issued by the respondent to the petitioner is Ex. WE-1/8 (Colly). The copy of the Election I.Card and ration card Ex. WE-1/9 (Colly). The copy of various letter issued by the claimant to the respondent/opposite party dt. 09.7.1997, 10.3.1998, 20.06.1999, 10.08.1998, 27.02.1999, 30.07.1999 are Ex. WE-1/10 (Colly).

13. That the deponent states that due to illegal termination the workman is unemployed even till now.

14. That the statement made in this affidavit are true and correct.

He tendered his affidavit on 25.06.2013 and he was cross-examined on same day. when he was cross-examined by Ld. A/R for the management. He could not

remain stable on his statement to support his case. Hence, solitary statement of workman/claimant is not reliable and credible. So, reliance cannot be placed on it.

Moreover, evidence of management through its witness MW1 is worthy of credence because nothing could be extracted out in his cross-examination by Ld.A/R for the workman. In these circumstances, evidence on record does not justify the claim of workman/claimant. Who remained absent for long term without any plausible reason in his probation period of employment when he was temporary employee. So, question of determination No.1 is liable to be decided in favour of management and against workman.

Which is accordingly decided. As question of determination No.1 has already been decided in favour of management and against workman. So, Workman is entitled to no relief. Hence, reference is liable to be decided against workman and in favour of management and his claim statement is liable to be dismissed.

Reference is accordingly decided and claim statement is accordingly dismissed.

Award is accordingly passed.

Dated:-19.2.2015

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 24 फरवरी, 2015

का.आ. 411.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महानिदेशक (वर्क्स) सीपीडब्ल्यूडी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, दिल्ली के पंचाट (संदर्भ संख्या 41/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24/02/2015 को प्राप्त हुआ था।

[सं. एल-42025/03/2015-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 24th February, 2015

S.O. 411.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 41/2010) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Director General (Works), CPWD and their workman, which was received by the Central Government on 24/02/2015.

[No. L-42025/03/2015-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT-II, DELHI****Present:-** Shri Harbansh Kumar Saxena**ID No.41/2010**

Sh. Om Prakash, S/o Sohan Lal,
CPWD Mazdoor Union,
Room No.95, Barracks No. 1/10,
Jam Nagar House,
Sahajahan Road

...Workman

Versus

Director General (Works),
CPWD Nirman Bhawan,
New Delhi

...Management

AWARD

On 25.11.2010 direct claim statement u/s 2A I.D. Act has been received in this tribunal. Which was register as I.D No. 41/10 and management (O.P.) was called upon to file written statement on 1.2.2011.

Although after 1.2.2011, 24.02.2011, 23.05.2011, 16.08.2011, 17.10.2011 and 20.12.2011 have been fixed for written statement. On 20.12.11 written statement has been filed by management. Workman in his claim statement prayed as follows:-

It is, therefore, prayed that the services of Sh. Om Prakash, Sewerman be reinstated w.e.f. 1.1.2009 full back wages granted to the daily rated workers working for skilled nature of job in the category of seweraman alongwith all consequential benefit.

Against claim statement management filed written statement on 20.12.2011 through which he denied the contents of claim statement and prayed that the claim filed by the claimant /workman is liable to be rejected with costs.

Against which workman filed rejoinder on 4.4.2012. Through which he reaffirmed the contents of claim statement.

On the basis of pleadings of parties my Ld. Predecessor framed following issues on :-

1. Whether the termination of Sh. Om Prakash S/o Sh. Sohan Lal w.e.f. 1.1.2009 is illegal and unjustified? If no, to what relief Sh. Om Prakash would be entitled and what directions are called for in this regard.
2. Relief.

Workman in support of his case filed affidavit of WW1 Sh. Om Prakash on 8.8.2012.

Workman tendered his affidavit on 31.10.2013 and same day he was cross-examined by Ld. A/R for the management.

His statement of tendering of affidavit and cross-examination is as follows:-

I tender my affidavit as Exhibit WW1/A which bears my signatures at point A and B alongwith documents Ex. WW1/1 collectively and Ex. WW1/2.

XXXXX by Sh. A.K. Pandey.

I have not studied. I am illiterate my age about 53 years. I have no record of date of birth. It is correct that I joined with the management w.e.f 11.1.86 . The date of my joining is with management of CPWD and I have no document in this regard. I have no knowledge about the fake contractor and my work and attendance were supervised by the Junior Engineer. It is correct that CPWD is a government establishment. The chart of attendance was kept in inquiry office of CPWD. Some of the documents were filed collectively. The total paper placed on record are 26 (photocopies).

Ld.A/R of the management refused to cross-examine on the ground that few paper in photocopies have been filed on behalf of the workman. He sought time for cross-examination.

Although these paper appears to have been filed in response to question put to witness. Deferring of cross-examination is not of justify.

However Ld.A/R for the management is at liberty to either to cross-examine or not.

I received payment through cash and initially I got 500 p.m. I received last payment in the last month of year 2008 of Rs. 3500/- received payment through cash. I was engaged through Junior Engineer about the work of seweraman. I know the name of Bhargav

It is correct that documents filed pages 26(note) in which the payment sheet is not mentioned enclosed. I did not sought any document as the same was within the management regarding joining letter of payment etc. It is correct the CPWD being a Govt. department are supposed to do all the work. It is wrong to suggest that I never with the management . It is wrong to suggest that I m deposing falsely.

Management in support of its case filed affidavit of Sh. Uttam Chandra on 19.03.2014.

Sh. Uttam Chandra tendered his affidavit on 19.3.2014.

His statement of tendering of affidavit is as follows:-

I tender in evidence my affidavit Ex. MW/1 A which bears my signature at point 'A' and 'B' . I reply upon documents Ex. R/1 and Ex. R/2.

Sh. Uttam Chandra cross-examined by Ld. A/R for the workman on 9.10.2014. His cross-examination is as follows:-

I joined in 'B' Division Jan, 2013.

It is correct that workman Sh. Om Prakash has not been performing duty in my period.

Q. The document whether handed over to you is confirmed by your staff?

A. These documents are not on record of mgt.

Q. Whether you are conversant with the Award of I.D No. 16/2009 in CGIT-I on 9.9.2010?

A. Yes, appeal has been preferred along aforesaid award which is still pending in Hon'ble High Court.

Q. Whether documents shown to you and then you supplied the documents are not on record of management. Such documents have been admitted by same mgt.

A. Documents have not been admitted by management by any person.

As workman was not the workman of the management no question of giving notice to the workman is admitted in the instant case.

It is incorrect to suggest that workman was employed 11.1.86 as sewer man.

Q. Whether workman was terminate 1.1.2009 without taking permission from CGIT-I ?

A. As workman was not workman of Mgt. no question of termination arises alongwith permission of CGIT-I.

Q. Whether you have read through ID.NO. 16/2009 in CGIT-I on 9.9.2010, New Delhi ?

A. I have gone through ID. No. 16/2009 in CGIT –I on 9.9.2010. It is incorrect to suggest that I am giving false evidence.

Q. Whether you know the name of Sh. Vinod Kumar Goel and Sh. B.K. Bhattacharya previously posted in your department .

A. I know them.

Q. Whether you know Sh. M.T. Assudani, Asstt. Engineer, B Division , CPWD who have been previously posted in your department ?

A. I don't know.

It is incorrect to suggest that I am deposing false.

I have heard the arguments of Ld.A/R's for the parties and perused the pleadings of claim statement, written statement and rejoinder as well as evidence of workman and management including the principles laid down in case of Tapash Kumar Paul Vs. BSNL 2014 LAB. I.C. 4486(S.C) and settled law of Hon'ble Supreme Court.

It is, admitted fact that ID. No. 16 of 2009 Sh. Om Prakash Vs. Director General of works, CPWD has been

decided by Dr. R.K. Yadav, P.O., CGIT No. 1 Karkardooma Courts Complex, Delhi, on 9.9.2010.

Against which writ-petition has been filed by management which has been dismissed in default. Against that order restoration application is pending for disposal in Hon'ble High Court of Delhi.

Till writ-petition is decided on merits order dated 9.9.2010 cannot be final.

In this background contents of Para No. 21 of judgment dated 9.9.2010 passed by Dr. R.K. Yadav, P.O., CGIT No. 1 Karkardooma Courts Complex, Delhi, is of no avail to workman/ claimant.

Hence, instant claim filed by workman/claimant u/s 2A ID. Act is an futile attempt of claimant/workman to file fresh claim on the basis of similar facts on which ID.No. 16 of 2009 was filed and already been decided by , P.O., CGIT No. 1.

Aforesaid ruling cited on behalf of workman is inapplicable in the instant case due to distinguishable facts. So, it is of no avail to workman/claimant.

In these circumstances claim is not maintainable. Which liable to be dismissed. Hence, accordingly dismissed.

Award is accordingly passed.

Dated:-19.2.2015

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 25 फरवरी, 2015

का.आ. 412.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ संख्या 43/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/02/2015 को प्राप्त हुआ था।

[सं. एल-12012/75/2002-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 25th February, 2015

S.O. 412.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 43/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial Dispute between the management of Punjab National Bank and their workman, received by the Central Government on 12/02/2015.

[No. L-12012/75/2002-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**

Dated : 28th January, 2015

PRESENT : Shri S N NAVALGUND, Presiding Officer**C R No. 43/2002****I Party**

Sh. Dilip S Bhende,
No. 290, I Floor,
Upstairs of Guru Floor
Mills, Ramanuja Road,
Mysore – 570 004.

II Party

The Zonal Manager,
Punjab National Bank,
160, Greaves Road,
Zonal Office,
Chennai – 600 006.

Appearances :**I Party** : Shri K M S Bhat, Advocate**II Party** : Shri T R K Prasad, Advocate**AWARD**

1. The Central Government vide Order No. L-12012/75/2002-IR(B-II) dated 12.08.20002 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

“Whether the management of Punjab National Bank is justified in removing Shri Dilip S Bhende, Ex-special Assistant from the services of the bank w.e.f. 26.04.2000 is legal and justified? If not, what relief the workman is entitled to and from which date?”

2. On receipt of the reference while registering it in C R 43/2002 when notices were issued to both the sides they entered their appearance through their respective advocates and I Party filed his claim statement on 17.10.2002 and II Party filed its counter statement on 26.11.2002.

3. The brief facts leading to this reference and award may be stated as under.

4. Sh. Dilip S Bhende (hereinafter referred as I Party) who was appointed as Clerk-cum-Cashier in September 1975 by the Punjab National Bank (hereinafter referred as II Party) and later in the year 1982 selected and posted as Special Assistant at the V V Market Branch, Mysore of the II party was served with Charge sheet dated 09.03.1999 as under :

“Charge Sheet

You are hereby Charge Sheeted that :

While working as Special Assistant in BO:VV Market, Mysore, as In Charge of Loans Department, you are alleged to have committed the following :

1. TL a/c Shankar 16/11 :

An amount of Rs. 15,000/- was advanced on 26.4.95 for purchase of two cattle to Shri Shankar. The insurance claim was settled by M/s. United India Insurance Co. Vide letter dt. 27.9.95 by way of IOB Cheque No. 564231 dt. 27.9.95 for Rs. 7,500/- . Even though the loan account was outstanding, instead of crediting the amount to the loan account, the amount was credited to the personal account i.e. SF a/c 9274 of Shri Shankar on 29.9.95. The amount was withdrawn by way of withdrawal slip on 5.10.95 along with the balance available in the account. Later on, to conceal your misconduct, you have destroyed all the relevant correspondence with the insurance company.

2. TL a/c 297/8 Puttathayamma

Smt. Puttathayamma, was financed for purchase of cattle on 13.5.93 by advancing Rs. 15,000/-. You lodged the claim with M/s. United India Insurance Co. Vide letter dt. 25.5.94 and the Insurance Co. Has settled the claim vide IOB Cheque No. 500513 dt. 15.6.94 for Rs. 10,000/-. Even though the loan account was outstanding, the amount was credited to the Saving A/c i.e. SF 8604 of Ms. Puttathayamma on 18.6.94 and subsequently, the amount was withdrawn on 21.6.94 by withdrawal slip. You have passed the withdrawal slip of 21.6.94. To conceal your misconduct, you have destroyed all the relevant correspondence with the insurance company.

3. TL 245/8 MAHADEVAMMA

a) Smt. Mahadevamma, was financed for purchase of cattle on 27.11.91 for Rs. 9,750/-. The claim was lodged with Ms. New India Assurance Co. And they have settled the claim vide their Central Bank of India Cheque No. 114969 for Rs. 7,000/-. Despite the fact that the loan account was outstanding, the claim amount was credited to her Saving A/c 7881 on 19.3.93. On 22.3.93, Rs. 7,000/- was debited to her SF a/c and Rs. 3,000/- was transferred to TL a/c 267/8 of Basavanna, Rs. 1900/- to TL 275/8 of Shankar and Rs. 2100/- to TL 277/8 of madaiah. You have authorised the debit vouchers for transfer to difference loan accounts of different borrowers even though the term loan a/c of Smt. Mahadevamma was outstanding. To conceal your act, you have destroyed all the correspondence with the insurance company.

b) You have lodged claim with M/s. United India Insurance Co. On 21.9.94 and they have settled the claim vide IOB cheque No. 356621 dt. 31.10.94 for Rs. 7,000/-. Even though her loan a/c was outstanding, the amount was again credited to her

Savings a/c on 8.11.94. Subsequently, on 9.11.94, the amount was transferred to SF a/c 8005 of Shri B.Nagaraju, said to be the insurance agent. You have authorised the debit of SF 7881. To conceal your act, you have destroyed all the correspondence, with the insurance company.

4. SHANKAR TL 275/8

Shri Shanker was financed for purchase of two cows on 15.6.92 for an amount of Rs. 10,000/- You have lodged the claim with M/s New India Assurance Co., Devraj Urs Road, Mysore, and they have settled the claim vide Central Bank of India, Cheque No. 129880 dt. 4.3.94 for Rs. 7,000/- The amount was credited to his NPA a/c on 7.3.94, but after adjusting the loan, Rs. 3,511/- was transferred to TL(NPA) of Shri Madaiah on 7.3.94 without the authorisation from the borrower, instead of crediting the balance of Rs. 3511/- to his SF a/c. You have authorised the said debit voucher. Later on, to conceal your deed, you have destroyed all the correspondence with the insurance company.

5. TL a/c 319/8 K.GURUSWAMY

Shri Guruswamy, was financed for purchase of two cows by advancing Rs. 15,000/- on 3.9.93. The claim for insurance was lodged with M/s United India Insurance Co. On 29.6.95. They have settled the claim vide IOC Cheque No. 961666 for Rs. 7,500/- Though the loan account was running irregular, instead of crediting the amount to the loan account of the borrower, you have credited the same to his SF a/c 8236. Subsequently, he utilised that amount.

6. TL 301/8 VS NAGENDRA :

Shri Nagendra was financed for an amount of Rs. 15,000/- on 26.5.93 for purchase of two cows. You lodged the claim with M/s New India Assurance Co., JLB Road, Mysore, who settled the claim 1/ 93 vide SBI cheque no. 281944 dt. 14.6.94 for Rs. 7500/-. Though the loan a/c was outstanding, the amount was credited to his SF a/c 8366 on 18.6.94 and subsequently you have allowed the withdrawal on 21.6.94. You have passed the withdrawal slip for payment. Later on, to conceal your misconduct, you have destroyed all the correspondence with the insurance company.

7. TL 267/8 B.BASAVANNA :

Shri Basavanna was financed for an amount of Rs. 10,000/- on 28.2.92 for purchase of two cows. You lodged the claim with M/s United India Insurance Co., who settled the claim vide their letter dt. 22.3.93 enclosing IOB Cheque No. 493689 dt. 19.3.93 for Rs. 7000/-. The amount was credited to his SF a/c 8555 on 30.3.93 even though the loan

a/c was outstanding. Subsequently, you have transferred the said amount to SF 8005 of Shri B.Nagaraju on 3.4.93, who is said to be the insurance agent. Later on, to conceal your deed, you have destroyed all the correspondence with the insurance company.

Your above acts amounts to Gross Misconduct as per Clause 19.5(j) of the Bipartite Settlement, as amended from time to time.

You are hereby called upon to submit your written explanation WITHIN TEN DAYS OF RECEIPT OF THIS LETTER, failing which it will be presumed that you have no explanation to offer in your defence and further course of action will be initiated against you as per the provisions of Bipartite Settlement.

Sd/-

Regional Manager
Disciplinary Authority”

5. On reply of the I Party to the Charge sheet denying the Charges the Disciplinary Authority being not satisfied with the same ordered to face the Domestic Enquiry by his order dated 09.04.1999 appointing Sh. V L N Murthy, Senior Manager, CMO, Bangalore as Enquiry Officer and Sh. C N Muralidhar, Manager, BO, Rajajinagar, Bangalore (previous manager, VV Market, Mysore) as the Presenting Officer. The Enquiry Officer while conducting the enquiry by recording the evidence of Sh. K S Krishnamurthy and Sh. C N Muralidhar as MW 1 and MW 2 exhibiting 47 documents as PW 1 to PW 47 and examining CSE and Sh. Mariswamy, Sh. A Gururaj as DW 1 and DW 2 and got exhibited D 1 to D 8 submitted his report dated 06.12.1999 that Charges being proved. The Disciplinary Authority while sending the copy of the enquiry report through his letter dated 13.01.2000 calling for his submission after receipt of his submission dated 24.01.2000 concurring with the finding of the Enquiry Officer issued a show cause notice dated 06.04.2000 as to why he should not be removed from service with superannuation benefits and without disqualification from future employment and on his reply affording an opportunity of hearing by its order dated 26.04.2000 imposing the punishment of removal from service with superannuation benefits and without disqualification from future employment. Then as the CSE preferred appeal to Zonal Manager and the Appellate Authority, the Appellate Authority while providing personal hearing by his order dated 28.11.2000 confirmed the order of the Disciplinary Authority and dismissed the appeal. Then the I Party approached the ALC(C), Bangalore and as he submitted his FOC dated 29.03.2002 it resulted in this reference.

6. The I Party in his claim statement challenged the fairness and validity of the enquiry proceedings on the

ground that it was not conducted impartially as per the provisions of the Bipartite Settlement by which he was governed and also in violation of principles of natural justice and that the finding of the Enquiry Officer is not based on the material placed before him and the punishment imposed is also disproportionate etc., claimed for his reinstatement with full backwages and all other consequential benefits that he would have received in the absence of the impugned punishment. INTERALIA, the II Party in its counter statement justified the fairness of the Domestic Enquiry, finding of the Enquiry Officer as well as the punishment imposed being proportionate to the Charges / misconduct proved against the I Party prayed for rejection of the reference.

7. My learned predecessor having regard to the grievance of the I Party touching the fairness of the Domestic Enquiry while raising a Preliminary Issue as to

“Whether the Domestic Enquiry held by the II Party against I Party is fair and proper?”

after receiving the evidence adduced by both the sides and hearing the arguments of their learned advocates by his order dated 23.11.2004 answered the said issue in the negative i.e., the enquiry conducted by the management against the I Party is not fair and proper called upon the II Party to substantiate the Charges by leading necessary evidence. Pursuant to the said order the learned advocate appearing for the II Party while filing the affidavits of Sh. C N Muralidhar on 26.05.2006 who was Branch Manager of the V V Puram Branch between September 1996 to October 1998 examined him on oath on 09.03.2011 as MW 1 and got marked Ex. M-20 to Ex. M-56 the detailed description of which are narrated in the Annexure and also examined Sh. Jayanth N, Administrative Officer, United India Insurance Company limited; Sh. Bhaskar Reddy, Branch Manager, new India Assurance Company Limited, Belagol Branch and Sh. Shivanandappa, Branch Manager, United Indian Insurance Company Limited, City Branch, K R Nagar, Mysore as MWs 2, 3 and 4 respectively and in the evidence of MW 3 got marked Ex. M-1 to Ex. M-3 the detailed description of which are narrated in the Annexure and in the evidence of MW 4 got marked Ex. M-4 to Ex. M-19 the detailed description of which are narrated in the Annexure. The counsel for II party in the cross-examination of WW 1 by way of confrontation got marked Ex. M-57 to Ex. M-59 the detailed description of which are narrated in the Annexure. INTERALIA, the learned advocate appearing for the I party who got marked Ex W-1 to Ex. W-21 the detailed description of which are narrated in the Annexure in the cross-examination of MW 1 by way of confrontation while filing the affidavit of the I party examining him on oath as WW 1 got exhibited Ex. W-22 to Ex. W-46 the detailed description of which are narrated in the Annexure and closed his side.

8. With the above pleadings, oral and documentary evidence brought on record, the arguments addressed by counsel for both sides were heard. The learned advocate appearing for I Party has also filed notes of his arguments.

9. Since the Domestic Enquiry conducted by the II Party against the I party held as Not Fair and Proper and evidence of both sides has been received on merits the points that now arise for my consideration are :

Point No. 1 : Whether the II Party established the seven Charges levelled against the I Party ?

Point No. 2 : If yes, whether the punishment of removal from service with superannuation benefits and without disqualification from future employment is just and proper or whether any modification is warranted?

Point No. 3 : What Order/Award?

10. On appreciation of the pleadings, oral and documentary evidence brought on record by both the sides in the light of the arguments put forward by the learned advocates my finding on the above points are as under :

Point No. 1 : Affirmative except the second portion of the Charges alleging destruction of insurance correspondence by the I Party

Point No. 2 : Punishment imposed is just and proper and do not require any interference.

Point No. 3 : As per final order

11. **Point No. 1 :** As per the Charge No. 1 and the evidence of MW 1 Sh. CN Muralidhar the Branch Manager, of VV Market, Mysore at the relevant time is that an amount of Rs. 15000/- was advanced to Sh. Shankar for purchase of cattle on 26.04.1995 under term loan account No. 16/11 and on he reporting the death of the cattle purchased by him when the insurance claim was lodged with M/s. UNITED INDIA INSURANCE COMPANY LIMITED who had issued policy it settled the claim for Rs. 7500.00 and sent the same to the Bank through their letter dated 27.09.1995 and the I Party instead of crediting the said amount to the said loan account No. 16/11 credited it to the Personal Account of Sh. Shankar bearing SF Account No. 9274 on 29.09.1995 and the said amount was withdrawn by the Account Holder through withdrawal slip on 05.10.1995 and thereby the I Party deprived the bank from adjusting that amount to the loan account and enabled the account holder to withdraw that money and thereby he committed gross misconduct as per clause 19.5(j) of the Bipartite Settlement. In support of this Charge and oral evidence of MW 1 the II Party placed reliance on the entry in the term loan ledger Ex. M-20 (a); the letter addressed by the I Party to M/s. UNITED INDIA INSURANCE COMPANY LIMITED dated 23.08.1995 requesting to send the claim form reporting death of animal; the letter addressed by I Party dated 30.08.1995 to the

UNITED INDIA INSURANCE COMPANY LIMITED enclosing the claim form duly signed by the veterinary doctor alongwith a Tag with a request to settle the claim; clearing credit slip dated 28.09.1995 received from insurance company through their letter dated 27.09.1995; extract of saving fund account No. 9274; withdrawal slip dated 05.10.1995 for withdrawal of Rs. 12400.00 by Sh. Shankar which are marked as Ex M-6, 7, 21, 22 and 23 respectively. These documentary evidence do support the allegation of the Charge and the oral evidence given by MW 1. Infact there is no dispute as to the fact that Sh. Shankar was sanctioned with a loan of Rs. 15000.00 for purchase of cattle and same was being secured by the Insurance Policy issued by Ms/. UNITED INDIA INSURANCE COMPANY LIMITED and on report of death of the cattle the insurance claim was being settled at Rs. 7500.00 and same sent by the Insurance Company was being credited to the savings fund account of the borrower but it appears to be defence of I Party that the procedure adopted in the bank was to credit the insurance amount to the SF account and then to adjust it to the loan balance and accordingly he had arranged to deposit the insurance amount to the SF account of the borrower and as Bank Officer, Assistant Manager and Manager were being superior in rank to him if at all the credit of the insurance amount to SF account of the borrower was against the procedure adopted by the bank they would have raised objection and having not raised any objection the Branch Manager to take revenge against him at a subsequent stage managed to foist such a case against him. When the Bank advances loan for purchase of cattle and insist to insure the cattle and pay the insurance premium debiting it to the loan account of the borrower it is a common sense that the cattle is insured to secure the loan advanced to the customer as such when the cattle dies and insurance claim is made that has to go to the bank unless the borrower clear off the loan amount. Therefore the defence that there was no rule that the insurance claim should be credited to the loan account and there was a procedure to credit the same to the personal SF account of the borrower is unacceptable. The learned advocate appearing for the I Party referring to the admission of MW 1(M) in his cross-examination that if insured finance motor vehicle met with the accident and repaired at the garage the insurance amount received by the bank will be paid to the garage tried to submit that the insurance amount was not to be adjusted to the loan account. With due respect to the learned advocate for the I party there is a lot of difference in respect of insured motor vehicle repaired at a garage and the death of insured cattle because in the case of motor vehicle met with accident being repairable it is not extinguished whereas in case of death of a cattle it extinguishes and there is no question of paying the insurance claim amount to any one except to the borrower in case he had cleared the loan amount or to the bank in case the loan amount is not yet cleared. In the instant case admittedly the I Party was

aware the loan advanced to Sh. Shankar was still outstanding as admitted by himself as such he was expected to credit the insurance claim amount to the loan account instead of the personal SF account of the borrower which enabled the borrower to withdraw and there by resulting in loss to the bank. As far as the second portion of the Charge that I Party destroyed all the correspondence with the insurance company there being no evidence and only because they were not found such allegation being made against him that part of the Charge cannot be held as proved. In the result, I arrived at conclusion that the II Party having succeeded in establishing this Charge except the latter portion regarding destruction of the relevant correspondence with the insurance company.

12. As per Charge No. 2 and the evidence of MW 1 Smt. Puttatayamma was financed on 13.05.1993 for purchase of cattle to the tune of Rs. 15000.00 and the cattle purchased were insured with M/s. UNITED INDIA INSURANCE COMPANY LIMITED and on she reporting the death of the cattle and laying claim for the insurance amount it was settled for Rs. 10000.00 and same was sent through cheque dated 15.06.1994 to the Bank and the I Party though the loan account was outstanding credited to the savings fund account of Smt. Puttatayamma on 18.06.1994 enabling her to withdraw the same on 21.06.1994 and thereby the I Party deprived the bank from adjusting that amount to the loan account and enabled the account holder to withdraw that money and thereby he committed gross misconduct as per clause 19.5(j) of the Bipartite Settlement. In support of this Charge and evidence of MW 1 the II Party places reliance on relevant entry in term loan ledger at Ex. M-24(a); letter addressed by the I party to M/s. UNITED INDIA INSURANCE COMPANY LIMITED requesting to send the claim form reporting the death of cattle; letter addressed by the I party to M/s. UNITED INDIA INSURANCE COMPANY LIMITED dated 25.05.1994 forwarding claim form duly filled and the tag with a request to settle the claim; covering letter received from M/s. UNITED INDIA INSURANCE COMPANY LIMITED dated 15.06.1994 enclosing cheque for Rs. 10000.00 of the same date; extract of protested advance register of borrower Smt. Parvathamma showing the said loan account was still outstanding when the insurance amount was settled; extract of SF account bearing account No. 8604; clearing credit slip dated 17.06.1994 for crediting the insurance amount of Rs. 10000.00 to the SF account of Smt. Puttatayamma and withdrawal slip dated 21.06.1994 having withdrawn the said amount of Rs. 10000.00 by Smt. Puttatayamma which are marked as Ex. M-8, 9, 10, 25, 26, 27 and 28 respectively. These documentary evidence do support the allegation of the Charge and the oral evidence given by MW 1. Infact there being no dispute as to the fact that Smt. Puttatayamma was sanctioned with a loan of Rs. 15000.00 for purchase of cattle and same was being secured by the Insurance Policy issued by Ms/. UNITED

INDIA INSURANCE COMPANY LIMITED on report of death of the cattle the insurance claim was being settled at Rs. 10000.00 and same sent by the Insurance Company was being credited to the savings fund account of the borrower. Therefore the defence of the I Party as far as this transaction is also concerned similar to the Charge No. 1 for the same reasons assigned by me for Charge No. 1 the same being not acceptable this Charge is also has to be held as proved except the latter portion of the Charge regarding destruction of the relevant correspondence with the insurance company.

13. As per Charge No. 3 (a) and 3 (b) and the evidence of MW 1 Smt. Mahadevamma was sanctioned loan of Rs. 9750.00 on 27.11.1991 for purchase of cattle and same was insured with M/s. UNITED INDIA INSURANCE COMPANY LIMITED and on she reporting the death of the cattle and laying the claim on the insurance company it settled the claim for Rs. 7000.00 and forwarded the cheque for that amount to the Bank and the I Party though the loan amount was outstanding he credited it to SF Account 7881 instead of crediting it to her loan account and then out of that amount he transferred Rs. 3000.00 to term loan account to 267/8 of Sh. Basavanna, Rs. 1900.00 to term loan account 275/8 of Sh. Shankar and Rs. 2100.00 to the term loan account 277/8 of Sh. Madaiah without any authority by himself and again I Party lodged a insurance claim on 21.09.1994 and the insurance company settling the claim for Rs. 7000.00 under their letter dated 31.10.1994 forwarded the cheque for the said amount and I Party instead of crediting it to the loan account credited it to SF account of the borrower on 08.11.1994 and subsequently without any authorisation on 09.11.1994 transferred it to SF account of Sh. B Nagaraju the Insurance Agent and thereby the I Party deprived the bank from adjusting that amount to the loan account and enabled the insurance agent Sh. B Nagaraju to withdraw that money and thereby he committed gross misconduct as per clause 19.5(j) of the Bipartite Settlement. In respect of these Charges and the evidence of MW 1 the II party has placed reliance on the entry in the loan ledger folio 245/8 Ex M-24(d); letter addressed by I party to M/s UNITED INDIA INSURANCE COMPANY LIMITED dated 03.09.1994 to settle the claim reporting the death of the insured cattle; letter addressed by the I Party to the insurance company enclosing claim forms, tag with a request to settle the claim; extract of protested advanced register of the borrower of Smt. Mahadevamma showing the loan being outstanding; clearing credit slip dated 19.03.1993 for crediting the insurance amount to SF account of Smt. Mahadevamma; debit transfer voucher dated 22.03.1993 for Rs. 7000.00 debited to Smt. Mahadevamma, SF Account; credit transfer voucher dated 22.03.1993 for Rs. 1900.00 to term loan account of Sh. Shankar (folio No. 275/8); credit transfer voucher dated 22.03.1993 for Rs. 2100.00 to term loan account of Sh. Madaiah (folio No. 277/8); the letter of the

Ms. UNITED INDIA INSURANCE COMPANY LIMITED dated 31.10.1994 forwarding cheque of Rs. 7000.00 dated 31.10.1994 which are got marked as Ex M – 11, 12, 31, 32, 33 and 12 respectively. These documentary evidence do support these Charge under 3(a) and 3(b) and the defence put forward for the I Party similar to Charge No. 1 as far as these Charges are also concerned for the reasons assigned by me while considering Charge No. 1 being not acceptable this Charge is also held as proved except the portion that destroying the correspondence with the insurance company.

14. As per Charge No. 4 and the evidence of MW 1 (M) Sh. Shankar under loan account no. 275/8 was sanctioned Rs. 10000.00 for purchase of cattle on 15.06.1992 and the said cattle were insured with M/s. NEW INDIA ASSURANCE COMPANY LIMITED and on borrower reporting the death of the cattle the I Party laid claim with the insurance company and the insurance company settled it for Rs. 7000.00 and forwarded a cheque dated 04.03.1994 and the I party credited it to NPA account of the borrower and after adjusting the loan balance of Rs. 3511.00 transferred the remaining amount to term loan account of Sh. Madaiah without proper authority from the account holder by authorising himself. In support of this Charge and the evidence of MW 1 the II party has placed reliance on the entry in term loan ledger No. 275/8 marked at Ex M-24(f); discharge voucher signed by the I Party for receipt of cheque dated 04.03.1994 for Rs. 7000.00; clearing credit voucher crediting insurance claim amount of Rs. 7000.00 to NPA account of Sh. Shankar; extract of protested advance register in respect of Sh. Shankar showing outstanding amount of Rs. 3511.00 and debit transfer voucher dated 07.03.1994 transferring Rs. 3511.00 from Term Loan NPA account of Sh. Shankar to term loan account of Sh. Madaiah marked as Ex M- 34, 35, 36 and 37 respectively. Because the debit transfer voucher dated 07.03.1994/Ex M-37 suggest the I Party himself having authorised the transfer from NPA account of Sh. Shankar to the account of Sh. Madaiah and thereby the I Party deprived the bank from adjusting that amount to the loan account and enabled the account holder to withdraw that money and thereby he committed gross misconduct as per clause 19.5(j) of the Bipartite Settlement. In the result, I arrived at conclusion of answering that this Charge is also proved and the defence put forward for the I Party similar to Charge No. 1 as far as this Charge is also concerned for the reasons assigned by me while considering Charge No. 1 being not acceptable this Charge is also held as proved except the portion that destroying the correspondence with the insurance company.

15. As per Charge No. 5 and the evidence of MW 1 Sh. K Guruswamy who was sanctioned with loan of Rs. 15000.00 on 03.09.1993 for purchase of cattle under term loan ledger folio No. 319/8 and same were insured with M/s. United India Insurance Company and on report of

the death by the borrower the I party forwarded claim to the insurance company and the insurance company while settling the claim for Rs. 7500.00 forwarded cheque for the said amount dated 06.07.1995 and I party though the account was running irregular instead of crediting that amount to the loan account credited it to borrowers SF account No. 8236 which came to be withdrawn subsequently by him and thereby the I Party deprived the bank from adjusting that amount to the loan account and enabled the account holder to withdraw that money and thereby he committed gross misconduct as per clause 19.5(j) of the Bipartite Settlement. In support of this Charge and evidence of MW 1 the II party has placed reliance on entry in term loan ledger sheet folio No. 319/8 marked as Ex M-24(g); letter dated 26.06.1995 addressed to M/s. UNITED INDIA INSURANCE COMPANY LIMITED signed by the I party for manager requesting for claim forms reporting death of cattle; letter dated 29.06.1995 addressed to M/s. UNITED INDIA INSURANCE COMPANY LIMITED signed by the I Party for manager enclosing the claim form requesting to settle the claim; letter dated 07.07.1995 of M/s. UNITED INDIA INSURANCE COMPANY LIMITED forwarding cheque dated 06.07.1995; clearing credit slip dated 15.07.1995 crediting the insurance claim amount Rs. 7500.00 to SF account No. 8736 of the borrower and extract of SF Account No. 8736 of the borrower marked as Ex M- 14, 15, 16, 38 and 39 respectively. These documentary evidence do support this Charge under 5 and the defence put forward for the I Party similar to Charge No. 1 as far as this Charges is also concerned for the reasons assigned by me while considering Charge No. 1 being not acceptable this Charge is also held as proved except the portion that destroying the correspondence with the insurance company.

16. As per Charge No. 6 and the evidence of MW 1 (M) Sh. V. S. Nagendra was sanctioned term loan of Rs. 15000.00 on 26.05.1993 for purchase of cattle and same were insured with NEW INDIA ASSURANCE COMPANY LIMITED and on borrower reporting death of the cattle the I party when laid claim with the insurance company the company settled the claim for Rs. 7500.00 and forwarded the cheque for the said amount dated 14.06.1994 and the I Party though the loan account was outstanding credited it to SF account No. 8336 of the borrower on 18.06.1994 which is subsequently withdrawn through withdrawal slip and thereby the I Party deprived the bank from adjusting that amount to the loan account and enabled the account holder to withdraw that money and thereby he committed gross misconduct as per clause 19.5(j) of the Bipartite Settlement. In support of this Charge and evidence of MW 1 the II Party placed reliance on the entry in term loan ledger folio No. 301/8 at Ex M-24 (i); letter dated 01.02.1999 addressed by the Senior Division Manager to the Manager, Punjab National Bank, Regional Office,

Bangalore informing that the settlement of claim in respect of Sh. V. S. Nagendra was received on 05.01.1999 and as they are not able to trace the claim file as they have settled the claim more than four years back and are enclosing attested copy of discharge voucher signed by the Manager of VV Market Branch, Mysore; photocopy of Discharge voucher received from M/s. NEW INDIA ASSURANCE COMPANY LIMITED signed by the I Party for having received Rs. 7500.00; extract of protested advance register pertaining to the borrower; clearing credit slip dated 17.06.1994 crediting the insurance claim amount of Rs. 7500.00 to SF Account No. 8366; withdrawal slip of Rs. 7500.00 by Sh. V. S. Nagendra/ borrower; SF Ledger sheet in respect of the borrower got marked as Ex M- 40 to 45 respectively. These documentary evidence do support this Charge No. 6 and the defence put forward for the I Party similar to Charge No. 1 as far as this Charges is also concerned for the reasons assigned by me while considering Charge No. 1 being not acceptable this Charge is also held as proved except the portion that destroying the correspondence with the insurance company.

17. As per the Charge No. 7 and the evidence of MW 1 (M) Sh. B. Basavanna was sanctioned with loan of Rs. 10000.00 for purchase of cattle and same was insured with M/s. UNITED INDIA INSURANCE COMPANY LIMITED and on report of death of the cattle by the borrower the I party placed claim with the insurance company and the insurance company settling the claim by Rs. 7000.00 sent cheque for the said amount dated 19.03.1993 and though the loan amount was outstanding the I party instead of crediting it to loan account credited it to his SF account No. 8555 on 30.03.1993 and subsequently transferred to SF No. 8005 of Sh. B. Nagaraju, Insurance Agent on 03.04.1993 and thereby the I Party deprived the bank from adjusting that amount to the loan account and enabled Sh. B. Nagaraju an insurance agent to withdraw that money and thereby he committed gross misconduct as per clause 19.5(j) of the Bipartite Settlement. In support of this Charge and evidence of MW 1 (m) the II party has placed reliance on entry in the term loan ledger folio No. 267/8 marked as Ex M-24(k) ; letter dated 10.02.1993 addressed to the Insurance company requesting for claim forms signed by the I party for Manager; letter dated 10.03.1993 forwarding the claim form signed by the I party for Manager; letter dated 22.03.1993 from M/s. UNITED INDIA INSURANCE COMPANY LIMITED enclosing cheque for Rs. 7000.00 dated 19.03.1993; extract of protest advanced register in respect of the borrower showing the loan account being outstanding; clearing credit slip dated 27.03.1993 crediting insurance claim amount to SF account of borrower account No. 8555; debit transfer voucher dated 03.04.1993 for Rs. 7000.00 debiting SF account No. 8555 and crediting it to SF Account No. 8555 to Sh. B. Nagaraju, Insurance Agent and credit transfer voucher dated 03.04.1993 crediting Rs. 7000.00 to SF Account of Sh. B. Nagaraju, Insurance Agent

got marked as Ex M-17 to 19 and 46 to 49 respectively. These documentary evidence do support this Charge No. 7 and the defence put forward for the I Party similar to Charge No. 1 as far as this Charges is also concerned for the reasons assigned by me while considering Charge No. 1 being not acceptable this Charge is also held as proved except the portion that destroying the correspondence with the insurance company.

18. In view of the above discussion, I have arrived at conclusion the II party having proved all the seven Charges except the second portion those Charges regarding destruction of insurance correspondence by the I Party.

19. Point No. 2 and 3 : The Charges proved against the I Party that he who was dealing with loan accounts having credited the insurance claim made on behalf of the borrowers to their respective SF Account instead of their loan accounts though the loans were outstanding enabling them to withdraw that amount which was infact to be adjusted by the Bank towards outstanding loan and also without any authority having transferred the amount from the SF account of the borrowers to some other SF Accounts and the account of the insurance agent being acts prejudicial to the interest of the Bank likely to involve the bank in serious loss, the punishment of removal from service needs no interference. In my opinion any lenient view taken under the circumstances may be an encouragement to the bank employees as such I find no reason to interfere in the punishment imposed by the Disciplinary Authority upheld by the Appellate Authority. In the result, I have arrived at conclusion the punishment imposed is legal and justified and I party is not entitle for any relief. Under the circumstances, I pass the following.

ORDER

The management of Punjab National Bank is justified in removing Sh. Dilip S Bhende, Ex – Special Assistant from the services of the Bank w.e.f. 26.04.2000 and it needs no interference and he is not entitle for any relief.

S. N. NAVALGUND, Presiding Officer

ANNEXURE-I

Witnesses examined on behalf of II Party:

- MW 1 (M) – Sh. C. N. Muralidhara, Senior Manager
 MW 2 (M) – Sh. Jayanth N, Administrative Officer, United India Ins. Co. Ltd.,
 MW 3 (M) – Sh. Bhaskar Reddy, Branch Manager, New India Ass. Co. Ltd.,
 MW 4 (M) – Sh. Shivamadappa, Branch Manager, United India Ins. Co. Ltd.,

Witnesses examined on behalf of I Party:

- WW 1(M) – Sh. Dilip S Bhende, I Party

Documents exhibited on behalf of II Party/Management:

- Ex M – 1 - Letter addressed by Sh. S. N. Narayanan, Senior Divisional Manager, NIAC to II Party in the year 2002
 Ex M – 1(a) - Signature of Sh. S. N. Narayanan
 Ex M – 2 - Head Office Circulars dated 05.10.1994 and 27.04.2007
 Ex M – 3 - Letter dated 25.07.2006 addressed by Sh. P. B. Nayak, Divisional Manager to the Manager, PNB, Mysore
 Ex M – 3(a) - Signature of Sh. P. B. Nayak
 Ex M – 4 - Letter dated 17.01.1995 addressed to II Party by the Branch Manager
 Ex M – 5 - Copies of claim cheque
 Ex M – 6 - Letter addressed by Punjab National Bank to UNITED INDIA INSURANCE COMPANY LIMITED dated 23.08.1995
 Ex M – 7 - Letter of II Party dated 30.08.1995 informing the UNITED INDIA INSURANCE COMPANY LIMITED enclosing claim form, Veterinary Certificate and Tag 0194 for their reference
 Ex M – 8 - Letter dated 07.05.1994 requesting UNITED INDIA INSURANCE COMPANY LIMITED for claim form of borrower Smt. Puttathayamma
 Ex M – 9 - Letter of PNB dated 25.05.1994 to UNITED INDIA INSURANCE COMPANY LIMITED enclosing claim form, post-mortem report and tag for reference relating to Smt. Puttathayamma
 Ex M – 10 - Letter of UNITED INDIA INSURANCE COMPANY LIMITED to PNB dated 15.06.1994 settling the claim cheque for Rs. 10,000.00
 Ex M – 11 - Letter of PNB to Br. Manager, UNITED INDIA INSURANCE COMPANY LIMITED dated 03.09.1994 requesting for claim form relating to Smt. Mahadevamma
 Ex M – 12 - Letter from PNB to UNITED INDIA INSURANCE COMPANY LIMITED dated 21.09.1994 enclosing Veterinary certificate, claim papers, Post-mortem Report relating to Smt. Mahadevamma
 Ex M – 13 - Letter from UNITED INDIA INSURANCE COMPANY LIMITED to PNB dated 31.10.1994 settling the claim of Rs. 7,000.00
 Ex M – 14 - Letter of PNB to UNITED INDIA INSURANCE COMPANY LIMITED dated

	26.06.1995 relating to one Sh. Guruswamy requesting for claim forms to complete the formalities	Ex M – 24(g)-	Loan entry in respect of Sh. K Guruswamy, Page No. 319
Ex M – 15	- Letter of PNB to UNITED INDIA INSURANCE COMPANY LIMITED dated 29.06.1995 submitting claim form, veterinary certificate and tag relating to Sh. Guruswamy	Ex M – 24(h)-	Signature of the I Party
		Ex M – 24(i)-	Loan entry in respect of Sh. V S Nagendra, Page No. 301
		Ex M – 24(j)-	Signature of the I Party
Ex M – 16	- Letter of UNITED INDIA INSURANCE COMPANY LIMITED to PNB dated 07.07.1995 settling the cheque for Rs. 7500.00	Ex M – 24(k)-	Loan entry in respect of Sh. B Basavanna, Page No. 267
		Ex M – 25	- Ledger extract of protested advance register pertaining to Smt. Puttathaiamma
Ex M – 17	- Letter of PNB to UNITED INDIA INSURANCE COMPANY LIMITED dated 10.02.1993 requesting to send claim forms for Tag No. 15585 and Policy No. 70601/47/12/11/545/95	Ex M – 26	- Photo copy of the savings bank ledger sheet pertaining to Smt. Puttathaiamma, A/c No. 8604 showing credit of insurance claim
		Ex M – 27	- Photo copy of the clearing credit slip dated 17.06.1994 for crediting the insurance claim amount to Smt. Puttathaiamma Savings Account No. 8604, Rs. 10,000.00 signed by the I party
Ex M – 18	- Letter of PNB to UNITED INDIA INSURANCE COMPANY LIMITED dated 10.03.1993 enclosing claim form relating to the claim of Sh. Basavanna	Ex M – 28	- Withdrawal slip dated 21.06.1994 for having withdrawn Rs. 10,000.00 from A/c no. 8604 by Smt. Puttathaiamma and signed by the I party having passed for payment
Ex M – 19	- Letter of UNITED INDIA INSURANCE COMPANY LIMITED to PNB dated 22.03.1993 enclosing the cheque of Rs. 7000.00	Ex M – 29	- Ledger extract of protested advance register pertaining to Smt. Mahadevamma
Ex M – 20	- Extract of term loan ledger in respect of Sh. Shankar from the year 1995	Ex M – 30	- Attested Photo copy of the clearing credit slip dated 19.03.1993 for crediting the insurance claim amount to Smt. Mahadevamma Savings Account No. 7881, Rs. 7,000.00 signed by the I party
Ex M – 20(a)-	Folio No. 16	Ex M – 31	- Attested Photo copy of the debit transfer voucher dated 22.03.1993 for Rs. 7,000.00 debited to Smt. Mahadevamma Savings Account signed by the I party
Ex M – 20(b)-	Signature of I Party	Ex M – 32	- Attested Photo copy of the credit transfer voucher dated 22.03.1993 for Rs. 1,900.00 credited to term loan account of Sh. Shankar (Folio No. 275/8) signed by the I party
Ex M – 21	- Photocopy of the clearing credit slip of Rs. 7,500.00 signed by I Party	Ex M-33	- Attested Photo copy of the credit transfer voucher dated 22.03.1993 for Rs. 2,100.00 credited to term loan account of Sh. Madaiah (Folio No. 277/8) signed by the I party
Ex M – 22	- Photocopy of the Savings Fund Account Sheet relating to Sh. Shankar, A/c No. 9274 for Rs. 7500.00	Ex M – 34	- Attested Photo copy of the discharge voucher signed by the I party for receipt of cheque dated 04.03.1994 for Rs. 7,000.00
Ex M – 23	- Withdrawal slip dated 05.10.1995 for having withdrawn Rs. 12,400.00 from Savings Account of Sh. Shankar which includes insurance claim amount of Rs. 7500.00	Ex M – 35	- Attested Photo copy of the clearing credit slip dated 19.03.1994 for crediting the insurance claim amount to NPA account of
Ex M – 24	- Term Loan Ledger relating to Charge No. 2		
Ex M – 24(a)-	Loan entry in respect of Smt. Puttataiamma, Page No. 297		
Ex M – 24(b)	- Signature of the I Party		
Ex M – 24(c)-	Loan entry in respect of Smt. Mahadevamma, Page No. 245		
Ex M – 24(d)	- Signature of the I Party		
Ex M – 24(e)-	Loan entry in respect of Sh. Shankar, Page No. 275		
Ex M – 24(f)-	Signature of the I Party		

- Sh. Shankar, Rs. 7,000.00 signed by the I party
- Ex M – 36 - Ledger extract of protested advance register pertaining to Sh. Shankar crediting excess amount of Rs. 3,500.00 to term loan account of Sh. Madaiah without authority of the borrower signed by I party at two places one for authorizing the ledger sheet and second for closure of the account
- Ex M – 37 - Attested Photo copy of the debit transfer voucher dated 07.03.1994 for Rs. 3,511.00 from term loan NPA account of Sh. Shankar to term loan account of Sh. Madaiah, signed by the I party
- Ex M – 38 - Attested Photo copy of the clearing credit slip dated 15.07.1995 for crediting the insurance claim amount to savings fund account of Sh. Guruswamy, Rs. 7,500.00
- Ex M – 39 - Attested Photo copy of saving fund Account No. 8736 ledger sheet in respect of Sh. K Guruswamy
- Ex M – 40 - Attested Photo copy of the letter dated 01.02.1999 of New India Assurance Company Limited informing therein that the discharge voucher was duly signed by the I party
- Ex M – 41 - Attested Photo copy of the discharge voucher for Rs. 7,500.00 duly discharged and signed in token of having received the cheque from the insurance company by the I party with his signature
- Ex M – 42 - Ledger extract of protested advance register pertaining to Sh. V S Nagendra
- Ex M – 43 - Attested Photo copy of the clearing credit slip dated 17.06.1994 for crediting the insurance claim amount to savings fund account of Sh. V S Nagendra, savings account No. 8366 a sum of Rs. 7,500.00 signed by the I party
- Ex M – 44 - Withdrawal slip dated 21.06.1994 for having withdrawn Rs. 7,500.00 from Savings Account of Sh. V S Nagendra authorized by I party with his signature
- Ex M – 45 - Attested Photo copy of saving fund Account No. 8366 ledger sheet in respect of Sh. V S Nagendra
- Ex M – 46 - Ledger extract of protested advance register pertaining to Sh. B Basavanna
- Ex M – 47 - Attested Photo copy of the clearing credit slip dated 27.03.1993 for crediting the insurance claim amount to savings fund account of Sh. B Basavanna, savings account No. 8555 a sum of Rs. 7,000.00 signed by the I party
- Ex M – 48 - Attested Photo copy of the debit transfer voucher dated 03.04.1993 for Rs. 7,000.00 debiting savings fund account No. 8555 and crediting to Saving Fund Account No. 8005 of Sh. B Nagaraju insurance Agent signed by the I party
- Ex M – 49 - Attested Photo copy of the Credit transfer voucher dated 03.04.1993 for Rs. 7,000.00 crediting to savings fund account of Sh. B. Nagaraju, Insurance Agent signed by I party for having passed the debit voucher
- Ex M – 50 - Office copy of the Charge sheet issued to the I party dated 09.03.1999
- Ex M – 51 - Original final order by the Disciplinary Authority imposing punishment dated 26.04.2000
- Ex M – 52 - Order rejecting the appeal filed by the I party dated 22.05.2000 passed by the Appellate Authority on 28.11.2000
- Ex M – 53 - Register now shown to me is in relation to destruction of the Old Records
- Ex M – 54 - Copy of book of instructions wherein period of preservation of records is prescribed
- Ex M – 55 - Copies of Investigation Report filed by Sh. K S Krishna Murthy dated 17.11.1998
- Ex M – 56 - Copies of Investigation Report filed by Sh. K S Krishna Murthy dated 21.02.1999
- Ex M – 57 - Photostat copy of the withdrawal slip on which I have permitted Smt. Puttatayamma to withdraw the amount and it bears my signature
- Ex M – 58 - Photo copy of the discharge voucher showing the amount to be withdrawn with permission of the Sh. Nagendra
- Ex M – 59 - Photostat copy of Protested Advance Register pertaining to Sh. Basavanna
- Documents exhibited on behalf of I Party:**
- W - 1 - Letter addressed by MW 1 to the I party dated 17.07.1998
- W - 2 series- Photostat copy of the Office Orders issued on 08.01.1991, 28.06.1991, 01.02.1994, 29.11.1995 attested by me as True Copies
- W – 3 - Copy of the proceedings of the enquiry now shown to me out of the five signatures
- W – 3(a) - Signature of Sh. A Gururaj

W – 3(b)	- Signature of Sh. C S Muralidhara	10.02.1993 requesting to send claim forms for Tag No. 15585 and Policy No. 70601/47/12/11/545/95
W – 3(c)	- Signature of Sh. Dilip S Bhende	
W – 4	- Letter dated 17.01.1995 addressed to II Party by the Branch Manager	W – 17 - Letter of PNB to UNITED INDIA INSURANCE COMPANY LIMITED dated 10.03.1993 enclosing claim form relating to the claim of Sh. Basavanna
W – 5	- Letter dated 22.08.1995 addressed by II Party to the Branch Manager of UNITED INDIA INSURANCE COMPANY LIMITED	W – 18 - Letter of UNITED INDIA INSURANCE COMPANY LIMITED to PNB dated 22.03.1993 enclosing the cheque of Rs. 7000.00
W – 6	- Letter dated 30.08.1995 addressed by II Party to the Branch Manager of UNITED INDIA INSURANCE COMPANY LIMITED	W – 19 - Credit voucher dated 12.04.1994
W – 7	- Letter dated 07.05.1994 requesting UNITED INDIA INSURANCE COMPANY LIMITED for claim form of borrower Smt. Puttathayamma	W – 20 - Credit voucher pertaining to SF Account 7944
W – 8	- Letter of PNB dated 25.05.1994 to UNITED INDIA INSURANCE COMPANY LIMITED enclosing claim form, post-mortem report and tag for reference relating to Smt. Puttathayamma	W – 21 - Credit voucher pertaining to SF Account 8796
W – 9	- Letter of UNITED INDIA INSURANCE COMPANY LIMITED to PNB dated 15.06.1994 settling the claim cheque for Rs. 10,000.00	W – 22 - Office Copy of my letters addressed to the Manager, VV Market Branch, Mysore dated 03.06.1999
W – 10	- Letter of PNB to Br. Manager, UNITED INDIA INSURANCE COMPANY LIMITED dated 03.09.1994 requesting for claim form relating to Smt. Mahadevamma	W – 23 - Letter addressed to Enquiry Officer dated 03.06.1999
W – 11	- Letter from PNB to UNITED INDIA INSURANCE COMPANY LIMITED dated 21.09.1994 enclosing Veterinary certificate, claim papers, Post-mortem Report relating to Smt. Mahadevamma	W – 24 - Letter addressed to Enquiry Officer dated 07.08.1999
W – 12	- Letter from UNITED INDIA INSURANCE COMPANY LIMITED to PNB dated 31.10.1994 settling the claim of Rs. 7,000.00	W – 25 - Letter received from the Disciplinary Authority dated 13.01.2000
W – 13	- letter of PNB to UNITED INDIA INSURANCE COMPANY LIMITED dated 26.06.1995 relating to one Sh. Guruswamy requesting for claim forms to complete the formalities	W – 26 - Copy of my letter to Disciplinary Authority dated 24.01.2000
W – 14	- Letter of PNB to UNITED INDIA INSURANCE COMPANY LIMITED dated 29.06.1995 submitting claim form, veterinary certificate and tag relating to Sh. Guruswamy	W – 27 - Letter received by me from the Disciplinary Authority proposing punishment dated 06.04.2000
W – 15	- Letter of UNITED INDIA INSURANCE COMPANY LIMITED to PNB dated 07.07.1995 settling the cheque for Rs. 7500.00	W – 28 - letter received from the Disciplinary Authority for Personal hearing dated 13.04.2000
W – 16	- Letter of PNB to UNITED INDIA INSURANCE COMPANY LIMITED dated	W – 29 - Copy of my letter addressed to Disciplinary Authority dated 19.04.2000
		W – 30 - Order received from Disciplinary Authority dated 26.04.2000
		W – 31 - Copy of appeal memo addressed by me to Appellate Authority dated 22.05.2000
		W – 32 - Letter received by me from Zonal Office, Chennai dated 29.05.2000
		W – 33 - Letter received by me dated 05.12.2000 from Regional Office, Bangalore with copy of Order dated 28.11.2000
		W – 34 - Copy of order of the Appellate Authority received by me dated 28.11.2000
		W – 35 - Extract of TL Loan Accounts pertaining to Sh. Shankar, Sh. Puttatayamma, Sh. Mahadevamma, Sh. Shankar, Sh. K

- Guruswamy, Sh. P S Nagendra and Sh B. Basavanna
- W – 36 - Extract of TL Loan Accounts pertaining to Smt. Puttatayamma
- W – 37 - Extract of TL Loan Accounts pertaining to Smt. Mahadevamma
- W – 38 - Extract of TL Loan Accounts pertaining to Sh. Shankar
- W – 39 - Extract of TL Loan Accounts pertaining to Sh. K Guruswamy
- W – 40 - Extract of TL Loan Accounts pertaining to Sh. P S Nagendra
- W – 41 - Extract of TL Loan Accounts pertaining to Sh. B Basavanna
- W – 42 - Carbon copy of proceedings dated 31.08.1999
- W – 43 - Copy of advocates notice issued to II party dated 09.07.2001
- W – 44 - Postal acknowledgement regarding service of legal notice dated 09.07.2001
- W – 45 - Copy of my letter addressed to II Party dated 08.11.2001
- W – 46 - Copy of letter addressed by Regional Office, Bangalore to Mysore Main Branch in reply to my letter dated 08.11.2001

नई दिल्ली, 26 फरवरी, 2015

का.आ. 413.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिपार्टमेंट ऑफ टेलीकम्युनिकेशंस, मध्य प्रदेश सर्किल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/25/01) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25/02/2015 को प्राप्त हुआ था।

[सं. एल-40012/410/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 26th February, 2015

S.O. 413.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. CGIT/LC/R/25/01) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Department of Telecommunications, MP Circle and their workman, which was received by the Central Government on 25/02/2015.

[No. L-40012/410/2000-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/25/01

Shri Rahis Khan,
S/o Shri Chand Khan,
C/o Bhurekhan Chudiwal,
Cantt. Gulabganj, Khejra Road,
Guna

...Workman

Versus

Chief General Manager,
Deptt. Of Telecommunications,
Hoshangabad Road,
MP Circle,
Bhopal

District Engineer (Phones),
Guna,
Distt. Guna

...Management

AWARD

Passed on this 23rd day of January, 2015

1. As per letter dated 27-12-2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-40012/410/2000/IR(DU). The dispute under reference relates to:

“Whether the action of the management of District Engineer (Phones), Guna in terminating Shri Rahis Khan S/o Chand Khan w.e.f. 21-2-98 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Pages 2/1 to 2/7. Case of Ist party workman is that he was initially appointed on 1-10-84 as labour on daily wages. He was continuously working without break till 20-2-98. His services were terminated orally without issuing any notice. He was not paid salary in lieu of notice. The workman was not paid retrenchment compensation. Any reasons were not given for his termination by IInd party. That he continuously worked more than 11 years. He completed 240 days during each of the calendar year. While terminating his services, seniority list was not prepared or displayed as per Rule 77 of the ID Rules 1957. Workman had filed original application No. 572/98 before CAT, Jabalpur, it was dismissed for want of jurisdiction observing that remedy under ID Act was available.

3. Workman submits that principles of last come first go was not complied. Employees appointed subsequent too him were continued on work. IInd party not considered his case for granting temporary status as per circular dated 1-11-1995. Said circular was issued as per directions issued

by Apex Court in case of daily rated casual labour Vrs Union of India reported in AIR-87-SC-2342. The ratio held in the case is reproduced. It is reiterated that IInd party violated provisions of ID Act. He was not provided re-employment and thereby violated Section 25-F, G, H of ID Act. On such grounds, workman is praying for his reinstatement with full back wages.

4. IInd party filed Written Statement at Page 6/1 to 6/5. The claim of workman is opposed. That workman was never appointed by IInd party. In 1987, appointing authority for workman was District Engineer, Telephone and not SDO(T). As per policy of the management, appointments were prohibited from 1985. As workman was not appointed on any post on daily wages, there was no muster roll of temporary employees.

5. IInd party submits that for petty work, time bound work, management was engaging few labours on piece rate. On completion of such work, appointment was taken automatically. Workman never completed 240 days service in any calendar year. As workman did not complete 240 days service, there was no question of issuing notice, paying compensation, preparing seniority list. Workman was engaged on contract basis through tender in 1998. There was no question of violation of Section 25 H of ID Act. Workman was neither appointed nor terminated by the management in 1999. On such ground, IInd party prays that reference be answered in its favour.

6. Ist party submitted rejoinder at Page 7/2 to 7/4 reiterating contentions in statement of claim.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|---------------------|
| (i) Whether the action of the management of District engineer(Phones), Guna in terminating shri Rahis Khan S/o Chand Khan w.e.f. 21-2-98 is justified? | In Negative |
| (ii) If not, what relief the workman is entitled to?" | As per final order. |

REASONS

8. Workman has raised dispute challenging his termination in violation of Section 25-F, G, H of ID Act. IInd party filing Written Statement has denied all material contentions of workman.

9. Workman filed his affidavit. Workman has stated that he was initially engaged on daily wages in the Telephone Department, Guna from 1-10-84. He continuously worked for more than 14 years. He was paid monthly wages obtaining signatures on receipts. During initial period, he was paid weekly wages. That he completed 240 days continuous service. On 23-2-98, he had requested

for granting temporary status as telephone mechanic. Thereafter his services were terminated orally. In his cross-examination, workman says the post was not advertised. His name was sponsored through Employment Exchange. He has not produced documents in that regard. SDO had take his oral interview. Appointment letter was not issued to him. the appointment were made as per order of GTO. He had not seen the order. He was orally appointed by SDO, Guna. He was working under Line Inspector alongwith Munna Singh, Kumraj Motiram. He was also working at Bina. First he worked under SIT, Motiram in December 1987. He was not engaged for special work. He denies suggestion that he had not completed 240 days continuous service.

10. The evidence of workman is supported by witness Ghansham and Govindram. That workman was working with them. Ghansham in his cross-examination says that he had come for his evidence alongwith workman. Workman was doing work of digging ditches, erecting poles and laying cable. They were not engaged for special work. Govindram in his cross says appointment letter was not given to him. he was paid salary by Junior Engineer. Only his signature was obtained but receipt was not prepared. He and Rahis Khan were doing work of laying cables, digging ditches. Etc. he denies that Rahis Khan was not doing any work in the department.

11. Management's witness Shri Rajendra Prasad in his affidavit supported contentions of management that the workman was not appointed in 1984. He did not work in the department. He not completed 240days in any of the calendar year. In his cross-examination, management's witness says he has no knowledge about workman doing petty work in the department. He denies that the daily wage employees were engaged in the deptt. during 1984 to 98. He was working at Gwalior Division during said period. Any documents are not produced in support of his evidence. MW-2 Gokul Prasad filed affidavit states document, muster roll Exhibit W-1 doesnot bear his signature. It is bogus. However in his cross he says that workman Rahis Khan, Ghansham and Govind-ram were working as casual labour with him. He was promoted as phone mechanic in 1995. That evidence of management's witness supports evidence of workman.

12. Management's witness Gokul Prasad filed affidavit that he was not competent to issue copy of muster roll. The documents doesnot bear his signature. The document is bogus. However in his cross-examination, said witness says he is working in Telephone Deptt. from 1979. After 10 years, he was given regular appointment as labour. As a casual labour, he was doing work of digging ditches, laying cables, erecting poles. As a phone mechanic, he was looking the driving engine. He was also distributing correspondence. He was doing work of connecting lines. In 1990, he was promoted as lineman. He was doing work

of fault removal. The work of digging ditches were carried from available labours. Their wages were paid by department. He was unable to tell whether Rahis Khan, Ghansham Singh, Govindram worked more than 240 days. Management has not produced any kind of documents like muster roll maintained during 87 to 99. The evidence of workman is supported by two witnesses examined in the case. The evidence of management's witness No.1 based on documents but document are not produced. Exhibit W-1 is copy of muster roll for the month Jan-90. The name of workman is appearing at Sl.No.1. The evidence of workman corroborated by two witnesses whereas evidence of management's witness No.1 is not supported by documents. He has no personal knowledge. The evidence of management's witness No.2 that work of digging ditches for line fault was carried from available labours. The department was paying their wages. Any documentary evidence is not produced. Under such circumstances, I donot find reason to disbelieve evidence of workman and his witnesses that workman was continuously working from 1-10-84 to 20-2-98. Workman was not served with notice. He was not paid retrenchment compensation, seniority list of casual employees were not prepared. Termination of workman is in violation of Section 25-F, G of ID Act. Therefore I record my finding in Point No.1 in Negative.

13. **Point No.2-** in view of my finding in Point No.1, termination of services of workman is in violation of Section 25-F, G, H of ID Act, question arises whether workman is entitled for reinstatement with back wages. Learned counsel for workman Shri Salunke submits that without considering workman was continuously working for more than 14 years, reinstatement with back wages be allowed. In support of his argument, learned counsel placed reliance on ratio held in

Case of Deepali Gundu Surwase versus Kranti Junior Adhyapak Mahavidyalaya and others reported in 2013(10)SCC 324. The facts of above cited case are not available. The appellant in above cited case was appointed as teacher in the Primary School run by a Trust established and controlled by a family. 25 memos were issued to her before her suspension. Exparte enquiry was conducted against her therefore ratio held in above cited case cannot be applied to case at hand.

Evidence in cross-examination is clear that he was engaged on daily wages without following selection process. His name was not sponsored through Employment Exchange. The legal position is rather settled that for violation of Section 25-F of ID Act, reinstatement cannot be allowed to the employees engaged on daily wages dehors the selection rules.

Next reliance is placed in ratio held in case of Ashok Kumar Sharma versus Oberoi Flight services

reported in 2010(1) SCC 142. In above cited case, workman had admitted guilt in writing about carrying 30 KLM soup spoons illegally in his shoe. The compensation was enhanced from Rs. 60,000 to Rs. 2 Lakhs.

In above cited case, employee was working as loader in flight services but in present case, workman was engaged on daily wages as casual employee. The pleading and evidence of workman are silent about wages paid to him. The salary of loader working in flight services could not be compared with casual employee like workman. Therefore compensation at same rate would not be justified. Considering workman was working as casual employee for more than 14 years, his services are terminated in violation of Section 25-F, G, H of ID Act, in my considered view, compensation Rs. 1,50,000/- would be appropriate. Accordingly I record my finding in Point No.1.

14. In the result, award is passed as under:-

- (1) The action of the management of District engineer (Phones), Guna in terminating shri Rahis Khan S/o Chaand Khan w.e.f. 21-2-98 is not proper.
- (2) IInd party management is directed to pay compensation Rs. 1,50,000/- to the workman.
- (3) IInd party shall pay cost of Rs. 3000/- to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 26 फरवरी, 2015

का.आ. 414.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिपार्टमेंट ऑफ टेलीकम्युनिकेशंस, मध्य प्रदेश सर्किल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/42/01) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25/02/2015 को प्राप्त हुआ था।

[सं. एल-40012/463/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 26th February, 2015

S.O. 414.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. CGIT/LC/R/42/01) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Department of

Telecommunications, MP Circle and their workman, which was received by the Central Government on 25/02/2015.

[No. L-40012/463/2000-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/42/01

Shri Ghanshyam,
S/o Mangilal,
Vill. Khumbraj,
Bhawad Road,
Guna

...Workman

Versus

District Engineer(Phones),
Guna

Chief General Manager,
Deptt. Of Telecommunications,
Hoshangabad Road,
Bhopal

...Management

AWARD

Passed on this 23rd day of January, 2015

1. As per letter dated 18-1-01 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-40012/463/2000-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Distt. Engineer (Phones), Guna in terminating Shri Ghanshyam Singh S/o Mangilal w.e.f. 1996 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 3/1 to 3/7. Case of Ist party workman is that he was initially appointed on 1-4-90 as labour on daily wages. He was continuously working without break till 31-12-95. His services were terminated orally without issuing any notice. He was not paid salary in lieu of notice. The workman was not paid retrenchment compensation. Any reasons were not given for his termination by IInd party. That he continuously worked more than 4 years. He completed 240 days during each of the calendar year. While terminating his services, seniority list was not prepared or displayed as per Rule 77 of the ID Rules 1957. Workman had filed original application No. 318/2000 before CAT, Jabalpur, it was dismissed for want of jurisdiction observing that remedy under ID Act was available.

3. Workman submits that principles of last come first go was not complied. Employees appointed subsequent too him were continued on work. IInd party not considered his case for granting temporary status as per circular dated 1-11-1995. Said circular was issued as per directions issued by Apex Court in case of daily rated casual labour Vrs Union of India reported in AIR-87-SC-2342. The ratio held in the case is reproduced. It is reiterated that IInd party violated provisions of ID Act. He was not provided re-employment and thereby violated Section 25-F, G, H of ID Act. On such grounds, workman is praying for his reinstatement with full back wages.

4. IInd party filed Written Statement at Page 5/1 to 5/2. The claim of workman is opposed. That workman was never appointed by IInd party. Appointing authority for workman was District Engineer, Telephone and not SDO(T). As per policy of the management, appointments were prohibited from 1985. As workman was not appointed on any post on daily wages, there was no muster roll of temporary employees.

5. IInd party submits that for petty work, time bound work, management was engaging few labours on piece rate. On completion of such work, appointment was taken automatically. Workman never completed 240 days service in any calendar year. As workman did not complete 240 days service, there was no question of issuing notice, paying compensation, preparing seniority list. Workman was engaged on contract basis through tender in 1998. There was no question of violation of Section 25-H of ID Act. Workman was neither appointed nor terminated by the management in 1999. On such ground, IInd party prays that reference be answered in it is favour.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|---------------------|
| (i) Whether the action of the management of Distt. Engineer(Phones), Guna in terminating Shri Ghanshyam Singh S/o Mangilal w.e.f. 1996 is justified? | In Negative |
| (ii) If not, what relief the workman is entitled to?” | As per final order. |

REASONS

7. Workman has raised dispute challenging his termination in violation of Section 25-F, G, H of ID Act. IInd party filing Written Statement has denied all material contentions of workman.

8. Workman filed his affidavit. Workman has stated that he was initially engaged on daily wages in the Telephone Department, Guna from 1-4-90. He continuously worked for 4 years 8 months. He was paid monthly wages obtaining signatures on receipts. During initial period, he was paid weekly wages. That he completed 240 days

continuous service. On 23-2-98, he had requested for granting temporary status as telephone mechanic. Thereafter his services were terminated orally. In his cross-examination, workman says the post was not advertised. His name was sponsored through Employment Exchange. He has not produced documents in that regard. SDO had take his oral interview. Appointment letter was not issued to him. The appointment were made as per order of GTO. He had not seen the order. He was orally appointed by SDO, Guna. He was working under Line Inspector alongwith Munna Singh, Kumraj Motiram. He was also working at Bina. First he worked under SIT, Motiram in December 1987. He was not engaged for special work. He denies suggestion that he had not completed 240 days continuous service.

9. The evidence of workman is supported by witness Rahis Khan and Govindram. That workman was working with them. Govindram in his cross says that he had come for his evidence alongwith workman. Workman was doing work of digging ditches, erecting poles and laying cable. They were not engaged for special work. Govindram in his cross says appointment letter was not given to him. He was paid salary by Junior Engineer. Only his signature was obtained but receipt was not prepared. He and Rahis Khan were doing work of laying cables, digging ditches. Etc. he denies that Rahis Khan was not doing any work in the department.

10. Management's witness Shri Rajendra Prasad in his affidavit supported contentions of management that the workman was not appointed in 1987. He did not work in the department. He not completed 240 days in any of the calendar year. In his cross-examination, management's witness says he has no knowledge about workman doing petty work in the department. He denies that the daily wage employees were engaged in the deptt. during 1984 to 98. He was working at Gwalior Division during said period. Any documents are not produced in support of his evidence. MW-2 Gokul Prasad filed affidavit that documents, muster roll Exhibit W-1 doesnot bear his signature. It is bogus. However in his cross he says that workman Rahis Khan, Ghansham and Govindram were working as casual labour with him. It is surprised to say that evidence of management's witness supports evidence of workman.

11. Management's witness Gokul Prasad filed affidavit that he was not competent to issue copy of muster roll. The documents does not bear his signature. The document is bogus. However in his cross-examination, said witness says he is working in Telephone Deptt. from 1979. After 10 years, he was given regular appointment as labour. As a casual labour, he was doing work of digging ditches, laying cables, erecting poles. As a phone mechanic, he was looking the driving engine. He was also distributing correspondence. He was doing work of connecting lines. In 1990, he was promoted as lineman. He was doing work

of fault removal. The work of digging ditches were carried from available labours. Their wages were paid by department. He was unable to tell whether Rahis Khan, Ghansham Singh, Govindram worked more than 240 days. Management has not produced any kind of documents like muster roll maintained during 87 to 99. The evidence of workman is supported by two witnesses examined in the case. The evidence of management's witness No.1 based on documents but document are not produced. The evidence of workman corroborated by two witnesses whereas evidence of management's witness No.1 is not supported by documents. He has no personal knowledge. The evidence of management's witness No.2 that work of digging ditches for line fault was carried from available labours. The department was paying their wages. Any documentary evidence is not produced. Under such circumstances, I do not find reason to disbelieve evidence of workman and his witnesses that workman was continuously working from Dec. 87 to 31-3-99. Workman was not served with notice. He was not paid retrenchment compensation, seniority list of casual employees were not prepared. Termination of workman is in violation of Section 25-F, G of ID Act. Therefore I record my finding in Point No.1 in Negative.

12. **Point No.2-** in view of my finding in Point No.1, termination of services of workman is in violation of Section 25-F, G, H of ID Act, question arises whether workman is entitled for reinstatement with back wages. Learned counsel for workman Shri Salunke submits that without considering workman was continuously working for more than 4years, reinstatement with back wages be allowed. In support of his argument, learned counsel placed reliance on ratio held in

Case of Deepali Gundu Surwase versus Kranti Junior Adhyapak Mahavidyalaya and others reported in 2013(10)SCC 324. The facts of above cited case are not available. The appellant in above cited case was appointed as teacher in the Primary School run by a Trust established and controlled by a family. 25 memos were issued to her before her suspension. Exparte enquiry was conducted against her therefore ratio held in above cited case cannot be applied to case at hand.

Evidence in cross-examination is clear that he was engaged on daily wages without following selection process. His name was not sponsored through Employment Exchange. The legal position is rather settled that for violation of Section 25-F of ID Act, reinstatement cannot be allowed to the employees engaged on daily wages dehors the selection rules.

Next reliance is placed in ratio held in case of Ashok Kumar Sharma versus Oberoi Flight services reported in 2010(1) SCC 142. In above cited case, workman had admitted guilt in writing about carrying 30 KLM soup spoons illegally in his shoe. The

compensation was enhanced from Rs. 60,000 to Rs. 2 Lakhs.

In above cited case, employee was working as loader in flight services but in present case, workman was engaged on daily wages as casual employee. The pleading and evidence of workman are silent about wages paid to him. The salary of loader working in flight services could not be compared with casual employee like workman. Therefore compensation at same rate would not be justified. considering workman was working as casual employee for 4 years 8 months, his services are terminated in violation of Section 25-F, G, H of ID Act, in my considered view, compensation Rs. 75,000/- would be appropriate. Accordingly I record my finding in Point No.1.

13. In the result, award is passed as under:-

- (1) The action of the management of Distt. Engineer(Phones), Guna in terminating Shri Ghanshyam Singh S/o Mangilal w.e.f. 1996 is not proper.
- (2) IInd party management is directed to pay compensation Rs. 75,000/- to the workman.
- (3) IInd party shall pay cost of Rs. 3000/- to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 26 फरवरी, 2015

का.आ. 415.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिपार्टमेंट ऑफ टेलीकम्युनिकेशंस, मध्य प्रदेश सर्किल के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/19/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25/02/2015 को प्राप्त हुआ था।

[सं. एल-40012/266/91-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 26th February, 2015

S.O. 415.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. CGIT/LC/R/19/93) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Department of Telecommunications, MP Circle and their workman, which was received by the Central Government on 25/02/2015.

[No. L-40012/266/91-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/19/93

Shri Aghan Singh,
S/o Shri Firangi Ram,
Gram Lidiya,
Tehsil Kota,
Distt. Bilaspur (MP)

...Workman

Versus

Sub Divisional Officer (Telegraph),
Telecommunication Deptt.,
Distt. Bilaspur (MP)

...Management

AWARD

Passed on this 22nd day of January, 2015

1. As per letter dated Nil by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-L-40012/266/91-IR(DU). The dispute under reference relates to:

“Whether the action of the Sub Divisional Officer (Telegraph) Bilaspur is justified in retrenching Shri Aghan Singh, S/o Firangi Ram w.e.f. 15-10-90? If not, to what relief the workman concerned is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 35 to 37. The case of workman is that he was working with IInd party from 1984 to 15-10-90 as casual labour. Vide order dated 15-10-90, his services were terminated. In termination order, it was observed that workman was terminated as per RTO No. MPPRE 01-59CL dt. 12-1-90. The working period of workman was shown February 84 to March 90. Workman was paid wages till 15-10-90. General Manager did not consider Para 2/1(2) of Letter dated 12-1-90. The casual labour working for more than 240 days acquire status of mazdoor. On said ground, workman submits his termination is illegal. Principles of natural justice were not followed while terminating his services. Workman prays for his reinstatement.

3. IInd party filed Written Statement at Page 43 to 47. The claim of workman was opposed by management denying material contentions of workman. according to IInd party, workman was engaged as casual labour. That as per policy laid down for employment of casual labours by CMPD Bhopal vide DO Letter dated 12-1-90, workman did not fulfill conditions for being termed as casual labours therefore he could not be retained further. The allegations or discriminations are denied by IInd party. Workman is not entitled to become ordinary mazdoor from casual labours since he did not fulfill the requirement. That workman absented unauthorisely from work. When his

work was going on, the management denied his status as casual labour. Workman was engaged for particular job as and when jobs were available. He worked as unskilled workman in construction job. Such job was not available regularly. IInd party denied that management violated section 25 H of ID Act. Workman was temporarily engaged. He could not be retained in service. On such ground, IInd party prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|---------------------|
| (i) Whether the action of the Sub Divisional Officer (Telegraph) Bilaspur is justified in retrenching Shri Aghan Singh, S/o Firangi Ram w.e.f. 15-10-90? | In Negative |
| (ii) If not, what relief the workman is entitled to?" | As per final order. |

REASONS

5. Workman is challenging termination of his services for violation of law. Workman filed affidavit of his evidence. Workman has stated that he was working on daily wages from February 1984 in establishment of Sub Divisional Officer, Telegraph, Bilaspur. He was regularly working till March 1985. His services were discontinued from 16-2-85. The employees engaged after him were continued on work. New persons were appointed. Some persons discontinued from 1-4-85 were re-engaged by IInd party. Workman himself was re-appointed after November 1987. He was continuously working on daily wages till 15-10-90. The work was available. The contractors were engaged by IInd party for carrying the work. He could not work with IInd party during April 85 to Nov-87 as he was not re-appointed by IInd party. Workman in his cross-examination says he was engaged on daily wage for digging ditches and laying cable. He was engaged by SDO(T). the work of laying cable is still going on. He denies that work of digging ditches and laying cable was completed. He admits that for permanent appointment in the department, names are called from Employment Exchange. The post is used to be advertised. His name was not sponsored through Employment Exchange.

Copy of order passed by CAT, Jabalpur bench in Original Application is produced on record. In para-28 of the order, it is observed that the petitioners who were appointed after 22-6-88 are not entitled for regularization or to get the temporary status. However as and when vacancies arise, they shall be entitled to get employment as held by the Supreme Court in AIR 1995(S.C.W) 2413.

Para-7 of the order refers to Scheme run by department known as Casual Labours (Grant of Temporary Status and Regularisation) Scheme of

the Department of Telecommunications, 1989. The scheme came into force w.e.f. 1-10-89.

The caption "Temporary Status" reads- Temporary status would be conferred on all the casual labourers currently employed and who rendered a continuous service of atleast one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing 5 day week).

The working days of workman shown in para-2 of the Written Statement are more than 240 days in 84-85, 88-89 & 89-90 workman is squarely covered for temporary status. Document Exhibit W-1 admitted by IInd party shows 363 working days of workman. Exhibit W-2 is copy of termination order. W-3 admitted by IInd party shows names of the 57 employees whose promotions were cancelled. Exhibit W-4 is representation submitted by workman to the management. Exhibit W-5 shows workman was paid compensation Rs. 1552.50. Exhibit W-6 shows 363 working days of workman.

6. Management has not adduced evidence of any witness.

7. Services of Ist party were terminated as per Letter dated 12-1-90 by Chief General Manager. When workman had worked with IInd party from 1984-85 to 1990, he is covered under the scheme. No reasons are given by management why he was denied status of temporary labour. Therefore the reasons for termination of workman are incorrect. For above reasons, I record my finding in Point No.1 in Negative.

8. **Point No. 2-** In view of my finding in Point No.1 the action of management of IInd party is found illegal. Workman was denied benefit of temporary status as per the scheme of Casual Labours (Grant of Temporary Status and Regularisation Scheme 1989. The termination of workman deserves to be quashed. The question arises whether workman is entitled to reinstatement with back wages. Workman was intermittently engaged as per evidence. Considering the evidence and facts of the case, workman was paid retrenchment compensation. The claim for backwages cannot be allowed. The workman deserves to be reinstated. In pursuance of the benefit of scheme given to other employees, workman cannot be discriminated. Accordingly I record my finding in Point No.2.

9. In the result, award is passed as under:-

- (1) The action of the Sub Divisional Officer (Telegraph) Bilaspur is justified in retrenching Shri Aghan Singh, S/o Firangi Ram w.e.f. 15-10-90 is not legal.
- (2) IInd party is directed to reinstate workman as labour according temporary status and continuity of service without backwages.

R. B. PATLE, Presiding Officer

नई दिल्ली, 26 फरवरी, 2015

का.आ. 416.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिपार्टमेंट ऑफ टेलीकम्युनिकेशंस, मध्य प्रदेश सर्किल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/99/94) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25/02/2015 को प्राप्त हुआ था।

[सं. एल-40012/1/93-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 26th February, 2015

S.O. 416.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. CGIT/LC/R/99/94) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Department of Telecommunications, MP Circle and their workman, which was received by the Central Government on 25/02/2015.

[No. L-40012/1/93-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/99/94

Shri Shankarlal
S/o Shri Munnaji,
Village Birgod,
Post & Tehsil Tarana,
Distt. Ujjain

...Workman

Versus

The SDO(T),
Telecom Deptt.
Ujjain

...Management

AWARD

Passed on this 29th day of January, 2015

1. As per letter dated 13-7-94 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-40012/1/93-IR(DU). The dispute under reference relates to:

“Whether the action of the management of SDO(T) Telecom Deptt. Ujjain in retrenching the services of Shri Shankarlal S/o Munnaji, a casual mazdoor w.e.f. 17-8-87 and finally w.e.f. May 1989 after re-engagement during 1988 and 1989 is legal and

justified? If not, to what relief he is entitled to and from what date?”

2. After receiving reference, notices were issued to the Parties. Ist party workman submitted statement of claim at Page 2/1 to 2/2. Case of Ist party workman is that he was engaged as temporary labour in February 1984. He was continuously working till 7-7-85. As he was not keeping proper health, he was unable to attend duties. He submitted Medical Certificate. Again he was engaged on work from January 86 to Aug 87, Jan 88 to March 88, Jan 89 to April 89 workman submits that he was deliberately discontinued from work on pretext that he was absent from duty for more than six months. That termination of his service is illegal. On such ground, he prays for reinstatement with back wages.

3. IInd party filed Written Statement at Page 5/1 to 5/2 opposing claim of workman. IInd party submits that Ist party workman was engaged as temporary casual labour from Feb 84 to June 85. Workman had not submitted any information about his illness or absence from duty. The workman had not disclosed from which kind of illness he was suffering. The medical certificate is not produced. Zerox copy of certificate produced doesnot bear any date. The details of illness are not disclosed in it. Workman was again engaged in January 86 as temporary casual employee. Workman remained absent for six months from July 85 to Dec-85. Therefore his date of engagement was treated Jan 86. The services of workman were terminated issuing notice dated 17-7-87. Workman was offered retrenchment compensation Rs. 450/- said amount was sent by MO dated 19-8-87. Workman submitted application dated 16-1-89 for taking him on work but as approval was not issued from office, his request was not accepted.

4. Ist party workman submitted rejoinder at Page 6/1 to 6/2 reiterating his contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|---|---------------------|
| (i) Whether the action of the management of SDO(T) Telecom Deptt. Ujjain in retrenching the services of Shri Shankarlal S/o Munnaji, a casual mazdoor w.e.f. 17-8-87 and finally w.e.f. May 1989 after re-engagement during 1988 and 1989 is legal and justified? | In Negative |
| (ii) If not, what relief the workman is entitled to?” | As per final order. |

REASONS

6. Workman is challenging termination of his service for violation of Section 25-F of ID Act. Workman filed affidavit of his evidence. Workman says he was engaged

by IInd party from Feb. 84. He was terminated from 17-8-87. That from January 86 to 17-8-87, he was continuously working for 299 days. His services were terminated without notice. Retrenchment compensation was not paid to him. workman further stated that he was also working from January 88 to March 88, Jan. 89 to April 89. Those two scales of his working are hardly of 2-3 months and not continuous service of 240 days. After 1st spell, his services were terminated on 17-8-87. Workman says he completed 299 days. In his cross-examination, workman says his work was laying cable lines, he was not called for interview. Appointment letter was not given to him. his name was not sponsored through Employment Exchange. He denies that the project in which he was working was closed.

7. Management's witness Shri S.N. Panse filed affidavit of his evidence. He says that in 1984, workman was engaged as casual labour. He worked for 85 days. Again he was engaged in July 85 to Dec-85 and again engaged from Jan-86. Considering different spells of working, his date of joining was considered January 1986. Notice of termination was issued to him on 17-7-87. Compensation Rs. 400/- retrenchment compensation Rs. 450/- was sent to workman by MO dated 19-8-87. Management's witness in his cross-examination says he was working as SDE Ujjain from 3-10-88. During 84 to 88, he was not posted at Ujjain. His affidavit is filed on information as per record. The witness of management was unable to tell working days 1 year preceding his termination. However he was also unable to tell workman completed 299 days service. After recording evidence of parties, matter remained pending for long period. The notes of argument were also submitted. IInd party was permitted to adduce secondary evidence. Xerox copy of notice to workman is produced. Notice refers to collect compensation amount from office. Amount is not mentioned in the notice. Therefore the notice served on workman cannot be said legal as per Section 25-F(3) of ID Act. Therefore termination of service of workman is in violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

8. **Point No.2-** as per my finding in Point No.1, termination of service of workman is in violation of Section 25-F of ID Act, considering the number of working days, workman was engaged on daily wages, reinstatement with back wages cannot be allowed.

9. Learned counsel for IInd party Shri R.S.Khare has submitted bunch of citations.

In case of Tata Iron and Steel Company Ltd. versus State of Jharkhand and others reported in 2014(1)SCC(L&S)183. Their Lordship dealing with Section 10 of ID Act held jurisdiction of Industrial Tribunal cum Labour Court determined by the reference. It is duty of Government to make the reference appropriately reflective of real/exact nature of dispute between parties.

Ratio held in the case has no bearing to the controversy between parties.

Next reliance is placed in case of Assistant Engineer, Rajasthan Development Corporation and another versus Giram Singh reported in 2013(2) SCC(L&S) 369. Their Lordship dealing with wrongful termination of daily rated workman held relief of compensation and not reinstatement should be granted. Their Lordship awarded compensation Rs.50,000 considering workman working for short period of 240 days only.

Even in present case workman was served with notice of retrenchment compensation Rs. 450/- indicates that workman completed 240 days service. Evidence of workman also shows that he hardly worked for more than 1 year, compensation Rs. 50,000 would be appropriate.

10. Learned counsel for IInd party relies on ratio held in case of Umadevi and others 2006-4-SCC-1. Workman was engaged as casual labour, hardly worked for short period. The terms of reference relates to legality of his retrenchment and regularization of workman is not involved in present case at hand therefore ratio held in above cited case needs no detailed discussion. As discussed above, compensation Rs. 50,000/- to the workman is appropriate. Accordingly I record my finding in Point No. 2.

11. In the result, award is passed as under:-

- (1) Action of the management of SDO(T) Telecom Deptt. Ujjain in retrenching the services of Shri Shankarlal S/o Munnaji, a casual mazdoor w.e.f. 17-8-87 and finally w.e.f. May 1989 after re-engagement during 1988 and 1989 is proper and legal.
- (2) IInd party is directed to pay compensation Rs. 50,000/- to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 26 फरवरी, 2015

का.आ. 417.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिपार्टमेंट ऑफ टेलीकम्युनिकेशंस, मध्य प्रदेश सर्किल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/26/01) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25/02/2015 को प्राप्त हुआ था।

[सं. एल-40012/434/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 26th February, 2015

S.O. 417.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. CGIT/LC/R/26/01) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Department of Telecommunications, MP Circle and their workman, which was received by the Central Government on 25/02/2015.

[No. L-40012/434/2000-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/26/01

Shri Govindam,
S/o Shankarlal
Vill Ramsinghpura,
PO Vapchalhar
Tehsil Chachoda,
Guna

...Workman

Versus

District Engineer (Phones),
Guna

Chief General Manager,
Deptt. of Telecommunications,
Hoshangabad Road,
Bhopal

...Management

AWARD

Passed on this 23rd day of January, 2015

1. As per letter dated 27-12-00 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-40012/434/2000/IR(DU). The dispute under reference relates to:

“Whether the action of the management of Telecom Distt. Engineer, Guna in terminating Shri Govindram S/o Shankarlal in the year 1999 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 2/1 to 2/7. Case of Ist party workman is that he was initially appointed on 1-12-1987 as labour on daily wages. He was continuously working without break till 31-3-99. His services were terminated orally without issuing any notice. He was not paid salary in lieu of notice. The workman was not paid retrenchment compensation. Any reasons were not given for his termination by IInd party. That he

continuously worked more than 11 years. He completed 240 days during each of the calendar year. While terminating his services, seniority list was not prepared or displayed as per Rule 77 of the ID Rules 1957.

3. Workman submits that principles of last come first go was not complied. Employees appointed subsequent too him were continued on work. IInd party not considered his case for granting temporary status as per circular dated 1-11-1995. Said circular was issued as per directions issued by Apex Court in case of daily rated casual labour Vrs Union of India reported in AIR-87-SC-2342. The ratio held in the case is reproduced. It is reiterated that IInd party violated provisions of ID Act. He was not provided re-employment and thereby violated Section 25-F, G, H of ID Act. On such grounds, workman is praying for his reinstatement with full back wages.

4. IInd party filed Written Statement at Page 5/5 to 5/5. The claim of workman is opposed. That workman was never appointed by IInd party. In 1987, appointing authority for workman was District Engineer, Telephone and not SDO(T). As per policy of the management, appointments were prohibited from 1985. As workman was not appointed on any post on daily wages, there was no muster roll of temporary employees.

5. IInd party submits that for petty work, time bound work, management was engaging few labours on piece rate. On completion of such work, appointment was taken automatically. Workman never completed 240 days service in any calendar year. As workman did not complete 240 days service, there was no question of issuing notice, paying compensation, preparing seniority list. Workman was engaged on contract basis through tender in 1998. There was no question of violation of Section 25 H of ID Act. Workman was neither appointed nor terminated by the management in 1999. On such ground, IInd party prays that reference be answered in it is favour.

6. Ist party submitted rejoinder at Page 6/1 to 6/4 reiterating contentions in statement of claim.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|---|---------------------|
| (i) Whether the action of the management of Telecom Distt. Engineer, Guna in terminating Shri Govindram S/o Shankarlal in the year 1999 is justified? | In Negative |
| (ii) If not, what relief the workman is entitled to?” | As per final order. |

REASONS

8. Workman has raised dispute challenging his termination in violation of Section 25-F, G, H of ID Act.

IInd party filing Written Statement has denied all material contentions of workman.

9. Workman filed his affidavit. Workman has stated that he was initially engaged on daily wages in the Telephone Department, Guna from 1-12-1987. He continuously worked for 6 years 5 months. He was paid monthly wages obtaining signatures on receipts. During initial period, he was paid weekly wages. That he completed 240 days continuous service. On 23-2-98, he had requested for granting temporary status as telephone mechanic. Thereafter his services were terminated orally. In his cross-examination, workman says the post was not advertised. His name was sponsored through Employment Exchange. He has not produced documents in that regard. SDO had take his oral interview. Appointment letter was not issued to him. The appointment were made as per order of GTO. He had not seen the order. He was orally appointed by SDO, Guna. He was working under Line Inspector alongwith Munna Singh, Kumraj Motiram. He was also working at Bina. First he worked under SIT, Motiram in December 1987. He was not engaged for special work. He denies suggestion that he had not completed 240 days continuous service.

10. The evidence of workman is supported by witness Ghansham and Rahis Khan. That workman was working with them. Ghansham in his cross says that he had come for his evidence alongwith workman. How many days workman had worked, he was not having in writing. He was unable to tell specific working days of workman in a particular year. The wages were paid for actual working days. Workman was doing work of digging ditches, erecting poles and laying cable. Rahis Khan in his re-examination, admitted document W-1 copy of muster roll. It contains name of workman Govindram. In his cross-examination he says he handed over original document to Advocate. That Govindram had obtained zerox copy from department. No application was given for request of copy of document. He and workman were working under Incharge. Their attendance was marked. He denies that Exhibit W-1 is bogus document. Said document does not bear his signature. Appointment letter was not issued to them. He denies that he gave evidence to support claim of Govindram and his case is also pending. He denies suggestion that they are giving evidence in case of each other.

11. Management's witness Shri Rajendra Prasad in his affidavit supported contentions of management that the workman was not appointed in 1987. He did not work in the department. He not completed 240 days in any of the calendar year. In his cross-examination, management's witness says phone mechanic does the work of removing cable faults. That regular employee dig ditches for line fault. The repair of cable is done by phone mechanic personally. That he works in Guna office from 2011. From 87 to 99, he was not posted at Guna. He do not know name

of regular employees carrying repair work during 1987 to 99. That as per record, no daily wage labour were working from 87 to 99. The record is not available. He denies that casual labours were paid wages as per muster roll. Personally he did not know workman Govindram. In his further cross-examination, management's witness says he knows lineman Motiram and Munna. He was also knowing Kasiram who retired in 2012. That he filed affidavit as per official record. As he personally check the documents, he says that his affidavit is based on personal knowledge. The evidence of management's witness shows that the witness of management has no personal knowledge. Any documents are not produced by the witness. However he denies suggestion of Ist party that workman was working as casual labour during 1987 to 1999.

12. Management's witness Gokul Prasad filed affidavit that he was not competent to issue copy of muster roll. The documents does not bear his signature. The document is bogus. However in his cross-examination, said witness says he is working in Telephone Deptt. from 1979. After 10 years, he was given regular appointment as labour. As a casual labour, he was doing work of digging ditches, laying cables, erecting poles. As a phone mechanic, he was looking the driving engine. He was also distributing correspondence. He was doing work of connecting lines. In 1990, he was promoted as lineman. He was doing work of fault removal. The work of digging ditches were carried from available labours. Their wages were paid by department. He was unable to tell whether Rahim Khan, Ghansham Singh, Govindram worked more than 240 days. Management has not produced any kind of documents like muster roll maintained during 87 to 99. The evidence of workman is supported by two witnesses examined in the case. The evidence of management's witness No.1 based on documents but document are not produced. Exhibit W-1 is copy of muster roll for the month Jn-90. The name of workman is appearing at Sl.No.1. The evidence of workman corroborated by two witnesses whereas evidence of management's witness No.1 is not supported by documents. He has no personal knowledge. The evidence of management's witness No.2 that work of digging ditches for line fault was carried from available labours. The department was paying their wages. Any documentary evidence is not produced. Under such circumstances, I do not find reason to disbelieve evidence of workman and his witnesses that workman was continuously working from Dec 87 to 31-3-99. Workman was not served with notice. He was not paid retrenchment compensation, seniority list of casual employees were not prepared. Termination of workman is in violation of Section 25-F, G of ID Act. Therefore I record my finding in Point No.1 in Negative.

13. **Point No. 2-** In view of my finding in Point No.1, termination of services of workman is in violation of

Section 25-F, G, H of ID Act, question arises whether workman is entitled for reinstatement with back wages. Learned counsel for workman Shri Salunke submits that without considering workman was continuously working for more than 11 years, reinstatement with back wages be allowed. In support of his argument, learned counsel placed reliance on ratio held in

Case of Deepali Gundu Surwase versus Kranti Junior Adhyapak Mahavidyalaya and others reported in 2013(10)SCC 324. The facts of above cited case are not available. The appellant in above cited case was appointed as teacher in the Primary School run by a Trust established and controlled by a family. 25 memos were issued to her before her suspension. Exparte enquiry was conducted against her therefore ratio held in above cited case cannot be applied to case at hand.

Evidence in cross-examination is clear that he was engaged on daily wages without following selection process. His name was not sponsored through Employment Exchange. The legal position is rather settled that for violation of Section 25-F of ID Act, reinstatement cannot be allowed to the employees engaged on daily wages dehors the selection rules.

Next reliance is placed in ratio held in case of Ashok Kumar Sharma versus Oberoi Flight services reported in 2010(1) SCC 142. In above cited case, workman had admitted guilt in writing about carrying 30 KLM soup spoons illegally in his shoe. The compensation was enhanced from Rs. 60,000 to Rs. 2 Lakhs.

In above cited case, employee was working as loader in flight services but in present case, workman was engaged on daily wages as casual employee. The pleading and evidence of workman are silent about wages paid to him. The salary of loader working in flight services could not be compared with casual employee like workman. Therefore compensation at same rate would not be justified. Considering workman was working as casual employee during 1987 to 1999, in my considered view, compensation Rs. One Lakh would be appropriate. Accordingly I record my finding in Point No.1.

14. In the result, award is passed as under:-

- (1) The action of the management of Telecom Distt. Engineer, Guna in terminating Shri Govindram S/o Shankarlal in the year 1999 is not proper.
- (2) IInd party management is directed to pay compensation Rs. One Lakh to the workman.
- (3) IInd party shall pay cost of Rs. 3000/- to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In

case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 26 फरवरी, 2015

का.आ. 418.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सब डिवीजनल ऑफिसर (टेलीग्राफ), बिलासपुर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/26/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25/02/2015 को प्राप्त हुआ था।

[सं. एल-40012/267/91-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 26th February, 2015

S.O. 418.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. CGIT/LC/R/26/93) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Sub Divisional Officer (Telegraph), Bilaspur and their workman, which was received by the Central Government on 25/02/2015.

[No. L-40012/267/91-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR NO. CGIT/LC/R/26/93

Shri Ghurau,
S/o Shri Hiralal,
Gram Khogasra,
Tehsil Kota,
Distt. Bilaspur

...Workman

Versus

Sub Divisional Officer (Telegraph),
Bilaspur

...Management

AWARD

Passed on this 22nd day of January, 2015

1. As per letter dated 2-1-93 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No.L-40012/267/91-IR(DU). The dispute under reference relates to:

“Whether the action of the SDO (Telegraph) Bilaspur is justified in retrenching Shri Ghurau S/o Hiralal

w.e.f. 15-10-90? If not, to what relief the workman concerned is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 21 to 25. The case of workman is that he was working with IInd party from 1984 to 15-10-90 as casual labour. Vide order dated 15-10-90, his services were terminated. In termination order, it was observed that workman was terminated as per RTO No. MPPRE 01-59CL dt. 12-1-90. The working period of workman was shown February 84 to March 90. Workman was paid wages till 15-10-90. General Manager did not consider Para 2/1(2) of Letter dated 12-1-90. The casual labour working for more than 240 days acquire status of mazdoor. On said ground, workman submits his termination is illegal. Principles of natural justice were not followed while terminating his services. Workman prays for his reinstatement.

3. IInd party filed Written Statement at Page 29 to 33. The claim of workman was opposed by management denying material contentions of workman. according to IInd party, workman was engaged as casual labour. That as per policy laid down for employment of casual labours by CMPD Bhopal vide DO Letter dated 12-1-90, workman did not fulfill conditions for being termed as casual labours therefore he could not be retained further. The allegations or discriminations are denied by IInd party. Workman is not entitled to become ordinary mazdoor from casual labours since he did not fulfill the requirement. That workman absented unauthorisely from work. When his work was going on, the management denied his status as casual labour. Workman was engaged for particular job as and when jobs were available. He worked as unskilled workman in construction job. Such job was not available regularly. IInd party denied that management violated section 25 H of IDAct. Workman was temporarily engaged. He could not be retained in service. On such ground, IInd party prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|---|---------------------|
| (i) Whether the action of the SDO (Telegraph) Bilaspur is justified in retrenching Shri Ghurau S/o Hiralal w.e.f. 15-10-90? | In Negative |
| (ii) If not, what relief the workman is entitled to?" | As per final order. |

REASONS

5. Workman is challenging termination of his services for violation of law. Workman filed affidavit of his evidence. Workman has stated that he was working on daily wages from February 1984 in establishment of Sub Divisional Officer, Telegraph, Bilaspur. He was regularly

working till March 1985. His services were discontinued from 16-2-85. The employees engaged after him were continued on work. New persons were appointed. Some persons discontinued from 1-4-85 were re-engaged by IInd party. Workman himself was re-appointed after November 1987. He was continuously working on daily wages till 15-10-90. The work was available. The contractors were engaged by IInd party for carrying the work. He could not work with IInd party during April 85 to Nov-87 as he was not re-appointed by IInd party. Workman in his cross-examination says he was engaged on daily wage for digging ditches and laying cable. He was working under SDO(T). The work of laying cable is still continuing. He denies that work of digging ditches and laying cable was completed. He admits that for permanent appointment in the department, names are called from Employment Exchange. The post is used to be advertised. His name was not sponsored through Employment Exchange.

Copy of order passed by CAT, Jabalpur bench in Original Application is produced on record. In para-28 of the order, it is observed that the petitioners who were appointed after 22-6-88 are not entitled for regularization or to get the temporary status. However as and when vacancies arise, they shall be entitled to get employment as held by the Supreme Court in AIR 1995(S.C.W) 2413.

Para-7 of the order refers to Scheme run by department known as Casual Labours (Grant of Temporary Status and Regularisation) Scheme of the Department of Telecommunications, 1989. The scheme came into force w.e.f. 1-10-89.

The caption "Temporary Status" reads- Temporary status would be conferred on all the casual labourers currently employed and who rendered a continuous service of atleast one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing 5 day week).

The working days of workman shown in para-2 of the Written Statement are more than 240 days in 84-85, 88-89& 89-90/ workman is squarely covered for temporary status. Document Exhibit W-3 admitted by IInd party which shows that workman was paid compensation Rs. 517.50. Exhibit W-2 is representation submitted by workman to the management.

6. Management has not adduced evidence of any evidence.

7. Services of Ist party were terminated as per Letter dated 12-1-90 by Chief General Manager. When workman had worked with IInd party from 1984-85 to 1990, he is covered under the scheme. No reasons are given by management why he was denied status of temporary labour. Therefore the reasons for termination of workman are

incorrect. For above reasons, I record my finding in Point No.1 in Negative.

8. **Point No. 2-** In view of my finding in Point No.1 the action of management of IInd party is found illegal. Workman was denied benefit of temporary status as per the scheme of Casual Labours Grant of Temporary Status and Regularisation Scheme 1989. The termination of workman deserves to be quashed. The question arises whether workman is entitled to reinstatement with back wages. Workman was intermittently engaged as per evidence. Considering the evidence and facts of the case, workman was paid retrenchment compensation. The claim for backwages cannot be allowed. The workman deserves to be reinstated. In pursuance of the benefit of scheme given to other employees, workman cannot be discriminated. Accordingly I record my finding in Point No.2.

9. In the result, award is passed as under:-

- (1) The action of the SDO (Telegraph) Bilaspur is justified in retrenching Shri Ghurau S/o Hiralal w.e.f. 15-10-90 is not legal.
- (2) IInd party is directed to reinstate workman as labour according temporary status and continuity of service without backwages.

R. B. PATLE, Presiding Officer

नई दिल्ली, 26 फरवरी, 2015

का.आ. 419.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक ऑर्डनेन्स फैक्ट्री, जबलपुर के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/87/01) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25/02/2015 को प्राप्त हुआ था।

[सं. एल-14012/2/2001-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 26th February, 2015

S.O. 419.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. CGIT/LC/R/87/01) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the General Manager, Ordnance Factory, Jabalpur and their workman, which was received by the Central Government on 25/02/2015.

[No. L-14012/2/2001-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/87/01

Shri Makboor Khan,
S/o Late Shri M. Mohammed Khan,
P.S.M. College,
Masjid Darikhana, Badi Omti,
Jabalpur

...Workman

Versus

General Manager,
Ordnance Factory,
Khamaria,
Jabalpur

...Management

AWARD

Passed on this 27th day of January, 2015

1. As per letter dated 15-5-01 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-14012/2/2001/IR(DU). The dispute under reference relates to:

“ Whether the action of the management of Ordnance Factory, Khamaria, Jabalpur in terminating the services of their workman Shri Makboor Khan S/o Late Shri Mohammed Khan, Ex-Darban w.e.f. 23-6-00 is justified? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Case of workman is that on 10-4-96, he was appointed as Darban on compassionate ground in place of his father. His probation period was of 2 years. That during probation period, he worked successfully with devotion to the satisfaction of IInd party. There were no complaints about his working. That after completion of probation period due to illness and disturbance in family, he had to proceed on leave on some occasions. He submitted applications with medical certificates. That due to malafide intention and to harass him, leave applications could not reach to the proper authority. He was marked absence. Workman had already submitted reasons for his absence. On 9-5-00, chargesheet was issued to him for unauthorized absence. That due to lack of education and his innocence, workman was not given proper chance for his defence surprisingly his services were terminated from 24-6-00. Workman submits termination of his service is illegal. No chargesheet was issued to him, any enquiry was not conducted against him. Principles of natural justice were not followed. He was denied charge for his defence. On such ground, workman submits that punishment imposed against him is highly excessive and

disproportionate. He prays for reinstatement with back wages.

3. IInd party submitted Written Statement at Page 6/1 opposing claim of workman. Claim of IInd party is that workman was appointed as Darban on compassionate ground as per letter dated 3-4-96 after death of his father. In appointment letter issued to workman, the condition was clearly mentioned that his appointment was on probation for 2 years. During probation period, his services could be terminated without notice. The condition was also mentioned that only on successful and satisfactory completion of probation period, his services would be regularized. IInd party submits that workman was regular in attendance. He was lacking devotion. His service record was not satisfactory. His probation period was extended by two years on the basis of Assessment Report. Workman had not completed probation period. His services were terminated w.e.f. 23-6-00 for the reasons no longer required. IInd party further submits that workman failed to improve. One increment of workman was withheld with cumulative effect for unauthorised absence. There was no need to conduct enquiry against workman as per terms and conditions in appointment. IInd party reiterates that workman was habitual absentee from duty. He did not complete probation period satisfactorily. Therefore his services were terminated.

4. Workman submitted rejoinder at 8/1 to 8/2 reiterating his contentions in statement of claim.

5. IInd party submitted reply to rejoinder at Page 9/1 to 9/3 raising contentions in Written Statement.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|---|--|
| (i) Whether the action of the management of Ordnance Factory, Khamaria, Jabalpur in terminating the services of their workman Shri Makboor Khan S/o Late Shri Mohammed Khan, Ex-Darban w.e.f. 23-6-00 is justified? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Workman is not entitled to any relief. |

REASONS

7. Workman is challenging termination of service claiming that he had satisfactorily completed probation period of two years. His services were terminated without notice. He was not given opportunity of advancing his defence. Management has produced copy of appointment letter at Exhibit M-1. Condition No.2 clearly provides his appointment was on probation period of 2 years. During probation period, his services could be terminated without

notice. Probation period cannot be extended double of the period of probation.

8. Workman submitted his affidavit of evidence supporting his contentions in statement of claim. That he was appointed on compassionate ground. After completion of probation period, he remained absent from duty for his illness. One increment of workman was stopped on 16-4-99 without cumulative effect. Workman submits that his services were terminated without giving him opportunity. In his cross-examination, workman says he was appointed on compassionate ground, confirmation order was not received by him. He was appointed as Darban in Security section. He did not remember for how many times, he remained absent from duty during probation period. He admits that he received treatment in hospital of Ordnance Factory. The entries of treatment were recorded in his Medical Card. He was absent during the period 17-8-98 to 11-9-98. He denies to have received any warning as per Exhibit M-2. His probation period was extended but order was not received. He received its information from security section. He was absent from duty during 27-10-99 to 18-11-99. He was receiving pay slips of his salary.

9. Management's witness Shri Surjit Das supported contentions of management in his affidavit of evidence. From his evidence, documents Exhibit M-1 to M-11 are proved. Management's witness in his cross says probation of workman was not completed. He has produced documents about his conduct. Exhibit M-2 unauthorised absence of workman and Exhibit M-4 is penalty for unauthorised absence. Assessment Report Exhibit M-6, M-7 were not sent to workman. Exhibit M-3 is order of extension of probation period was not sent to workman. Copy of M-3 was not sent to workman. Perusal of documents shows as per Exhibit M-3 probation period of workman was extended for 2 years from 10-4-98. Exhibit M-4 is order with-holding one increment of workman. Exhibit M-5 is copy of said order. Exhibit M-6, 7 shows performance of workman was average. He was irregular in attendance. Probationary period was not completed. It was recommended to extend probation period of workman in Exhibit M-8,9 Assessment Report also, his performance was reported average. The probation period of workman was not confirmed satisfactorily. His services are terminated as per Exhibit M-11 for the reasons his services were no longer required.

10. Learned counsel for IInd party Shri A.K.Shashi during course of argument emphasized that probation period of workman was not completed. His services were not confirmed. Workman was habitual absentee from duty. There is termination without notice. As per conditions in the appointment letter, learned counsel placed reliance on ratio held in

"Case of Registrar, High Court of Gujarat versus C.G. Sharma reported in 2005 LAB.I.C.203. Their

Lordship dealing with Gujarat Judicial Service Recruitment Rules 1961 Rule 5(4), and deemed confirmation of probationer held cannot claim automatic confirmation as of right since Rule provides existence of vacancy and satisfactory work as pre-requisite.”

The above cited case related to judicial officer. Workman cannot be equated with a Judicial Officer. Therefore ratio cannot be applied to present case.

Next reliance is placed on ratio held in case of Krishnadevaraya Education Trust Versus L.A. Balakrishna reported in AIR-2001SC-625. Their Lordship of the Apex Court dealing with Article 16 of the Constitution in context of letter of appointment right to terminate his services. In order to avoid the allegations that order is stigmatic the employer should not state any reasons why services are terminated.

In present case, Exhibit M-1 contains conditions that services of workman can be terminated without notice. The probation period can be extended twice of the initial probation period. Exhibit M-11, any reason for termination is not shown. Only it is referred no longer required. The termination of workman cannot be said illegal. For above reasons, I record my finding in Point No.1 in Affirmative.

11. In the result, award is passed as under:-

- (1) The action of the management of Ordnance Factory, Khamaria, Jabalpur in terminating the services of their workman Shri Makboor Khan S/o Late Shri Mohammed Khan, Ex-Darban w.e.f. 23-6-00 is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 26 फरवरी, 2015

का.आ. 420.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सामग्री प्रबंधन जबलपुर के कमांडेंट कॉलेज के प्रबंधन के संबंध में उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/177/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25/02/2015 को प्राप्त हुआ था।

[सं. एल-14011/33/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 26th February, 2015

S.O. 420.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. CGIT/LC/R/177/2000) of the Central Government

Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Commandant, College of Material Management Jabalpur and their workman, which was received by the Central Government on 25/02/2015.

[No.L-14011/33/2000-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/177/2000

Shri Sukratlal,
Vill Padari (Gangai),
PO Padaria,
Tehsil Kundam, Kundam Road,
Jabalpur

...Workman

Versus

The Commandant,
College of Material Management,
P.B. No. 3,
Jabalpur

...Management

AWARD

Passed on this 3rd day of February, 2015

1. As per letter dated 28-9-00 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-14011/33/2000/IR(DU). The dispute under reference relates to:

“Whether the action of the management of College of Material Management, Jabalpur in punishing compulsory retirement to Shri Sukratlal, Ex-Chowkidar is legal and justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 2/2 to 2/9. Case of workman is that he was initially appointed as watchman in 1979 by IInd party. He was honestly doing his job. Chargesheet was issued to him on 12-9-92 alleging unauthorized absence on different periods. Workman replied chargesheet explaining circumstances for his absence. It is further pleaded that when workman appeared in enquiry and oral assurance of the Enquiry Officer was given that he will not be ousted from employment. On such assurance, he accepted the charges. The admission of charges was not unconditional, unqualified and unequivocal. Enquiry Officer submitted his report without recording evidence. Punishment of compulsory retirement was imposed against workman. order was challenged filing Original Application 242/94

before CAT. When said matter was finally heard by CAT on 20-6-97, the order of punishment was set-aside. The matter was remanded back for taking decision after furnishing copy of Enquiry Report to the workman. The directions were also issued that workman shall continue under suspension. As per order passed by CAT, Jabalpur, workman submitted representation dated 9-7-97 requesting reinstatement. He also requested for paying suspension allowance. His representations were not considered.

3. It is submitted that management supplied Enquiry Report on 27-8-97. After receiving said report, workman submitted representation dated 8-9-97 explaining circumstances for his absence. Despite of representation submitted by workman, management imposed punishment of compulsory retirement on 30-9-97. Workman has pleaded that enquiry was not proper and legal. Chargesheet was vague. He had not admitted charges unconditionally. Enquiry Officer acted as prosecutor instead of Judge. The major penalty was imposed against workman is excessive/disproportionate. On such ground, workman prays for his reinstatement with consequential benefits. He also prays direction for payment of subsistence allowance.

4. IInd party filed Written Statement at Page 9/1 to 9/8. Preliminary objection is raised by IInd party that the reference is not tenable. That punishment of compulsory retirement was imposed after issuing chargesheet and conducting enquiry against workman. punishment is proportionate to the proved charges. Workman was appointed on 31-4-79. Punishment of withholding increment was imposed against him on 12-9-92. Workman was absent without leave. He was disobeying orders of his superiors. He was irregular in attendance. Enquiry Officer was appointed. Enquiry was conducted as per rules. documents were supplied to workman. Enquiry Officer found charges against workman proved. Workman did not challenge punishment order within period of humiliation. It is reiterated that for proved misconduct of unauthorized absence, punishment of compulsory retirement imposed against workman is proper and legal.

5. Workman filed rejoinder at Page 11/1 to 11/6 reiterating his contentions in statement of claim.

6. Enquiry conducted against workman is found vitiated as per order dated 15-5-2013. Management was granted permission to prove misconduct in Court.

7. Considering pleadings on record and order on preliminary issue, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|---|-------------|
| (i) Whether the management of IInd party proves charges of unauthorized and habitual absence against workman? | In Negative |
|---|-------------|

- | | |
|---|---------------------|
| (ii) Whether punishment of compulsory retirement against workman is proper and legal? | In Negative |
| (iii) If not, what relief the workman is entitled to?" | As per final order. |

REASONS

8. **Point No. 1, 2-** Enquiry conducted against workman is found illegal/vitiated as per order dated 15-5-2013. Management was granted permission to prove misconduct in Court. Management filed affidavit of evidence of Lt. Colonel Sanjay Bharati. The management's witness in his affidavit has stated that workman admitted charges against him feeling guilty of misconduct. The enquiry was closed. He has further stated that workman was not punctual in attendance. As such several warnings, showcause was issued to him. despite of warnings, showcause notice and chargesheet, workman not shown improvement. Workman was placed under suspension due to his long absence. Enquiry was held on 2-11-92. Punishment of compulsory retirement was imposed. That in view of workman's confessional statement, the assessment of documentary evidence by Disciplinary Authority was not suffering from any procedural informative. The entire affidavit of management's witness doesnot disclosed the exact period of unauthorized absence of workman. the enquiry conducted against workman is found vitiated and management is permitted to prove misconduct in Court. Affidavit of management's witness is not disclosing the period of unauthorized absence. Secondly witness of management remained absent for his cross-examination and therefore his evidence could not be considered. Thus there is no evidence of management by management to prove the charges of unauthorised and habitual absence of workman. Therefore I record my finding in Point No.1 in Negative.

9. **Point No. 2, 3-** In view of my finding in Point No. 1 charges of unauthorized absence are not proved against workman, the punishment of compulsory retirement therefore cannot be sustained. The punishment imposed against workman is illegal and deserves to be quashed and set-aside. Workman has claimed suspension allowance. When charges are not proved against workman and punishment of compulsory retirement imposed against him is illegal, workman would be entitled to consequential reliefs. Therefore it is not appropriate to pass separate directions for payment of subsistence allowance. For above reasons, I record my finding in Point No. 2 in Negative. Issue No. 3 is covered in the final order.

10. In the result, award is passed as under:-

- (1) The action of the management of College of Material Management, Jabalpur in punishing compulsory retirement to Shri Sukratlal, Ex-Chowkidar is not legal and proper.

- (2) Ist party is directed to reinstate workman with continuity of service and back wages.

R. B. PATLE, Presiding Officer

नई दिल्ली, 26 फरवरी, 2015

का.आ. 421.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, गन कैरिज फैक्ट्री, जबलपुर के प्रबंधन के संबंध में निर्यातों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/10/04) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25/02/2015 को प्राप्त हुआ था।

[सं. एल-14012/23/2003-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 26th February, 2015

S.O. 421.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. CGIT/LC/R/10/04) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the General Manager, Gun Carriage Factory, Jabalpur and their workman, which was received by the Central Government on 25/02/2015.

[No. L-14012/23/2003-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/10/04

Shri Suraj Prasad Nikhar,
C/o Shri Sanjay Tiwari, LIC Colony,
Maheshpur, Madanmahal,
Premnagar Post Office,
Jabalpur

...Workman

Versus

General Manager,
Gun Carriage Factory,
Jabalpur

...Management

AWARD

Passed on this 4th day of February, 2015

1. As per letter dated 29-1-04 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-14012/23/2003-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Gun Carriage Factory, Jabalpur MP in imposing the penalty of compulsory retirement on Shri Suraj Prasad Nikhar, Ex-Labour T.No.5249/MM Section vide order dated 23-12-91 is just and legal? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party submitted statement of claim at Page 3/1 to 3/7. Case of ist party is that he was appointed on post of Turner Grade C on 8-2-61. He was continuously performing his duties. In 1989, workman fell sick. Information was sent to Section Incharge of GCF, Jabalpur through co-worker Shri D.Pinth. Co-worker handed over this application to the Incharge. It was told that his application would be conveyed to the management by Incharge after few month when workman was sick, went to Factory Hospital, Satpuda Jabalpur. He was admitted for treatment. The Incharge Doctor was asking Factory Pass, I Card and other documents. Management never issued I Card or any letter to him. He was unable to show documents to the Doctor as per his request. He further submits that in condition of sickness, he went to factory. He was permitted to sit in Visitor's room. When he send information to Labour Officer and Section Incharge, they refused to give I Card, Factory Pass unless he joined duty. It is further submitted that the factory pass and I card could not be handed over. He was compelled to receive treatment from Private Doctors. He submitted application alongwith Medical Certificate. Workman submits that he remained absent because of illness. His wife died in 1967 leaving 2 minor children. His application sent through co-worker Pinth was not considered. Workman has further contented that chargesheet was issued to him. Enquiry was not properly conducted. Documents submitted to management were not called. The punishment of compulsory retirement was imposed against him without considering the documents. Appeal preferred by him was also rejected without considering the documents submitted by him. On such ground, workman prays to set-aside order of compulsory retirement with consequential benefits.

3. Management filed Written Statement at Page 9/1 to 9/4 opposing relief claimed by workman. it is submitted that workman was issued chargesheet for his unauthorized absence from 15-11-89. Workman was earlier penalized on 13 occasions. In 1972, penalty of removal from service was imposed for misconduct of absence from duty. In appeal, said order was modified and workman was reinstated from 4-1-1973. After chargesheet issued to workman on 5-3-91, workman denied the charges. Court of enquiry was constituted consisting Shri N.K.Swamy, Enquiry Officer, D.K.Mukhopadhyay Presenting Officer. Enquiry was conducted on various dates. Workman admitted charges against him. He requested Enquiry Officer that he will plead the case with help of Assisting Officer.

On his request, Enquiry Officer granted time. On 19-8-91, workman again accepted charges against him. He did not bring Assisting Officer for his defence. As workman admitted charges, Enquiry Officer submitted report to Disciplinary Authority. After careful consideration, leniency was shown to workman and punishment of compulsory retirement was imposed against him. All adverse contentions of workman are denied. IInd party has given details of earlier punishments imposed against workman. It is reiterated that enquiry was conducted as per law. Enquiry not suffered from any kind of infirmity. Workman has not produced medical certificate explaining his absence from duty during course of Enquiry Proceedings. On such contentions, IInd party submits that claim of workman deserves no merit.

4. Workman filed rejoinder reiterating his contentions in statement of claim.

5. As per order dated 23-11-2012, enquiry against workman was found legal and proper. Considering controversy between parties and orders passed on Preliminary Issue, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|--|
| “(i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?” | In Affirmative |
| (ii) Whether the punishment of dismissal imposed against workman is proper and legal? | In Affirmative |
| (iii) If not, what relief the workman is entitled to?” | Workman is not entitled to any relief. |

REASONS

6. As per finding on preliminary issue, enquiry is found legal. Question remains for decision that charges against workman are proved from evidence in Enquiry Proceedings. Whether punishment of compulsory retirement imposed against workman is proper and legal. The record of enquiry is produced by management Exhibit M-1 is article of charges. The charges alleged against workman pertains to habitual absence from duty since 15-11-89. The chargesheet was issued on 12-1-91. Workman has not disputed his absence from duty rather he claims that he submitted application through co-worker. However said co-worker Pinth is not examined before Enquiry Officer. Enquiry was adjourned time to time. Workman had submitted application for reinstating in service. Workman had submitted application dated 21-10-91 to General Manager contending that he was not aware of Enquiry Proceedings. On say of Enquiry Officer that there was no substance in the matter he would write in his

favour. He had agreed to the charges. He was not mentally sound. He was attending duties. The attendance particulars of workman are produced at Page 22. Enquiry Officer submitted his report observing that workman had accepted charge and pleaded guilty. In application to General Manager, he has admitted that he committed grave mistake by remaining absent from duty. He prays for leniency. Page 14 of enquiry proceedings shows that workman had admitted charges against him. his contentions that Enquiry Officer had assured favour to him appears afterthought. In view of admission of charge, no other proof is required. In view of Section 58 of Evidence Act, the charges against workman stands proved. With respect to Point No. 2, management has produced service details. Workman was censured in 1961. He was warned thrice from 1963 to 1964, he was censured thrice from 66 to 67. Workman was removed from service on 18-12-72 on the ground of absence from duty. In 1979, his one increment was withheld, in 1981, his pay was reduced to one stage. In 1983, one increment was with held and his pay was reduced by one stage. In 1982, he was censured and warned and in 1988, his pay was reduced to minimum for 3 years, in 1989, one increment was stopped. In 1989 again he was warned. The service details of workman shows that his service record was very much adverse. He was habitual absentee. He was given reinstatement in service in 1972. That workman not shown improvement in his conduct.

7. Considering the service record of workman, punishment of compensation against him cannot be said illegal. For above reasons, I record my finding in Point Nos. 1, 2 in Affirmative.

8. In the result, award is passed as under:-

- (1) The action of the management of Gun Carriage Factory, Jabalpur MP in imposing the penalty of compulsory retirement on Shri Suraj Prasad Nikhar, Ex-Labour T.No. 5249/MM Section vide order dated 23-12-91 is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 26 फरवरी, 2015

का.आ. 422.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, सरकार अफीम और उपक्षार निर्माण, मंदसौर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/303/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25/02/2015 को प्राप्त हुआ था।

[सं. एल-42012/150/96-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 26th February, 2015

S.O. 422.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. CGIT/LC/R/303/97) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Govt. Opium and Alkaloid Works, Mandsaur and their workman, which was received by the Central Government on 25/02/2015.

[No. L-42012/150/96-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/303/97

Shri Pawan, S/o Late Nemichand,
Through Shri G.S. Mangal, 86,
Hudco Colony,
Neemuch, Distt Mandsaur

...Workman

Versus

General Manager,
Govt. Opium & Alkaloid Works,
Neemuch, Distt. Mandsaur.

Chief Controller of
Govt. Opium & Alkaloid Factories,
13, Adarsh Nagar, Murar,
Distt. Gwalior

...Management

AWARD

Passed on this 27th day of January, 2015

1. As per letter dated 27-10-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-42012/150/96-IR(DU). The dispute under reference relates to:

“ Whether the action of the management of Govt. Opium & Alkaloid Works, Neemuch, Distt. Mandsaur in imposing punishment of dismissal on Shri Pawan S/o Shri Nemichand Khatod, Ex-Lab Assistant vide order dated 12-5-95 and then converting punishment of dismissal to compulsory retirement is legal and proper? If no, to what relief the concerned workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Workman filed statement of claim at Page 3/1 to 3/5. Case of workman is that from 22-3-79, he was

working as Lab Assistant. As per order dated 29-4-97, he was suspended. On 5-7-93, chargesheet was issued to him. Workman had denied charges. Workman has pleaded that enquiry against him was not proper and legal. He was not given translated copy of chargesheet in Hindi. Enquiry was not properly conducted, documents were not supplied to him. Principles of natural justice were not followed. He was not given opportunity to cross-examine management's witness. The findings of Enquiry Officer are contrary to the evidence as such perverse. Standing orders are not applicable. Alleged misconduct is not covered. The punishment of compulsory retirement imposed against him is illegal. On such ground, workman prays for his reinstatement with back wages.

3. IInd party submitted Written Statement at Pages 9/1 to 9/3. IInd party denied all material contentions of workman. It is reiterated that enquiry was properly conducted. Workman was given opportunity for his defence. Management relied documentary evidence. Workman did not produce any witnesses. Enquiry was closed. Considering findings of Enquiry Officer that charges were proved sympathetic view was taken. Moderate punishment of compulsory retirement was imposed. Appeal was rejected, punishment cannot be said harsh and disproportionate.

4. Workman submits rejoinder at Pages 10/1 to 10/2 reiterating his contentions in statement of claim.

5. Enquiry against workman is found illegal as per order dated 12-9-2013. Considering pleadings on record and findings on Enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|---------------------|
| “(i) Whether the punishment of dismissal imposed against workman is proper and legal?” | In Negative |
| (ii) If not, what relief the workman is entitled to?” | As per final order. |

REASONS

6. Enquiry conducted against workman is found illegal. Despite of repeated adjournments, IInd party did not adduce evidence to prove misconduct alleged against workman. After enquiry against workman is found illegal, both parties not adduced any evidence. When enquiry is found illegal, order of punishment cannot be sustained. The charges against workman are not proved from independent evidence. Counsel for workman had placed reliance on numerous citations. I have gone through the ratio held in citations relied by learned counsel for workman. As charges alleged against workman are not

proved, detailed discussion of citations is not necessary. As charges are not proved, punishment cannot be sustained. For above reasons, I record my finding in Point No.1 in Negative.

7. Workman in his affidavit of evidence has stated that he was unemployed, his family consists of two sons and ailing wife. His daughter is to be married and his sons are studying. The evidence of workman remained unchallenged. IInd party not participated nor cross-examined him. As order of punishment of compulsory retirement cannot be sustained for proof of the charges alleged against workman, workman deserves reinstatement with back wages. Accordingly I record my finding in Point No.2.

8. In the result, award is passed as under:-

- (1) The action of the management of Govt. Opium & Alkaloid Works, Neemuch, Distt. Mandsaur in imposing punishment of dismissal on Shri Pawan S/o Shri Nemichand Khatod, Ex-Lab Assistant vide order dated 12-5-95 and then converting punishment of dismissal to compulsory retirement is not proper.
- (2) IInd party is directed to reinstate workman with continuity of service and back wages.

R. B. PATLE, Presiding Officer

नई दिल्ली, 26 फरवरी, 2015

का.आ. 423.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, डाक विभाग, तमिलनाडु सर्कल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 6/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25/02/2015 को प्राप्त हुआ था।

[सं. एल-40012/89/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 26th February, 2015

S.O. 423.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 6/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Department of Posts, TN Circle and their workman, which was received by the Central Government on 25/02/2015.

[No.L-40012/89/2014-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 16th February, 2015

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 6/2015

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Director of Postal Services and their workman)

BETWEEN:

Sri P. Ganesan : 1st Party/Petitioner

AND

1. The Director of : 2nd Party/1st Respondent
Postal Services
Department of Posts
O/o the Post Master
General, Western Region,
T.N. Circle
Coimbatore-641002
2. The Superintendent : 2nd Party/2nd Respondent
of Post Offices
Post Office,
Salem West Division
Salem-636005

Appearance:

For the 1st Party/ : None
Petitioner

For the 2nd Party/ : Sri M. Liagatali, Advocate
1st & 2nd Respondent

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-40012/89/2014-IR (DU) dated 05.01.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the action of the management of Postal Authority regarding termination of the petitioner Sri P. Ganesan is justified or not? If not, to what relief the petitioner is entitled for?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 6/2015 and issued notices to both sides. On receipt of notice the Respondents have entered appearance through their counsel.

3. Notice was issued to the petitioner also. As could be seen from the endorsement on the postal cover, the petitioner has refused to accept notice even though the same was taken to him. In spite of this refusal, a second notice was issued to him and intimation regarding this is also seen given to him. However, the petitioner has not claimed the notice and the notice was again returned unserved. It could be seen from the conduct of the petitioner in refusing to accept the notice that he is not interested in prosecuting the matter. So the matter is to be disposed in his absence.

Accordingly, the reference is answered against the petitioner. An award is passed accordingly.

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : None

For the 2nd Party/1st & 2nd Management : None

Documents Marked:

On the petitioner and Managements side

Ex.No.	Date	Description
	Nil	

नई दिल्ली, 26 फरवरी, 2015

का.आ. 424.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डाक घरों उप संभाग विरुधुनगर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 12/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25/02/2015 को प्राप्त हुआ था।

[सं. एल-40012/105/2013-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 26th February, 2015

S.O. 424.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 12/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Post Offices Sub Division, Virudhunagar and their workman, which was received by the Central Government on 25/02/2015.

[No. L-40012/105/2013-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL - CUM - LABOUR COURT, CHENNAI

Tuesday, the 17th February, 2014

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 12/2014

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Asstt. Superintendent of Post Offices and their workman)

BETWEEN:

Sri P. Ramachandran : 1st Party/Petitioner

AND

1. The Assistant Superintendent : 2nd Party/
Post Offices Aruppukkottai 1st Respondent
Sub-Division
Virudhunagar-626101

2. The Senior Supdt. of : 2nd Party/
Post Offices 2nd Respondent
Virudhunagar District
Virudhunagar

Appearance:

For the 1st Party/ : M/s. R. Malaichamy, Advocates
Petitioner

For the 2nd Party/ : Mrs. K. Akhilandeswari, ACGSC
1st & 2nd
Respondent

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-40012/105/2013-IR (DU) dated 19.02.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the claim of Sri P. Ramachandran, GDS BPM for reinstatement and regularization in service by the Postal Department is justified? If not, to what relief is the workman entitled to?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 12/2014 and issued notices to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively. The petitioner has filed rejoinder in reply to the Counter Statement.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner has started to work at Thottiankulam Branch Post Office as Extra-Departmental Agent (EDA) now known as Gramin Dak Sevak (GDS) in the year 1996. He had worked at various places as GDS, though intermittently. When the Branch Post Master of Sempatti was promoted to the post of Postman, the petitioner was appointed to work as Branch Post Master, Sempatti for two months by order dated 19.10.2009. The petitioner joined the post on the same day. He was working as Branch Post Master continuously for more than 240 days. The petitioner was permitted to work as Branch Post Master till 05.05.2011. He worked against a clear vacant post. The Respondents denied work to the petitioner from 06.05.2011. The Postal Department in which the petitioner was working is an industry. The service conditions of the Branch Post Master are governed by instructions issued by the Directorate from time to time. The Department of Posts, Gramin Dak Sevak (Conduct and Employment) Rules, 2011 has not been framed under Article-309 of the Constitution of India. So the service conditions of the GDS are deemed to be governed by Industrial Law. The petitioner having put in more than 240 days of work is eligible for absorption as Branch Post Master in the Respondents' Postal Division. An order may be passed directing the Respondents to reinstate the petitioner with continuity in service, back wages and all other attendant benefits.

4. The Respondents have filed Counter Statement contending as follows:

The petitioner was an outsider and was working as leave substitute in leave vacancies of GDS at Aruppukkottai Sub-Division. He was temporarily engaged as EDDA at Thottiankulam Branch Post Office for the period from 12.10.1995 to 31.12.1996. He was again provisionally engaged as EDDA at Panaiyur Branch Post Office for 60 days. He worked as GDS BPM, Kuchampatti Branch Post Office for the period from 03.10.2000 to 03.01.2001 and at Thottiankulam branch from 11.10.2002 to 08.01.2003. He was engaged as GDS BPM at Sempatti Branch for two months w.e.f. 19.10.2009 on stop-gap arrangement. The Second Respondent is the appointing authority for GDS BPM post. The First Respondent has no authority to make appointment in this post. He has no power to issue notification also. The engagement of the petitioner was terminated on 06.12.2009 when another outsider was engaged. The Second Respondent has issued local notification and recruited deserving candidate for the post of Branch Post Master at Sempatti Branch. When the regular incumbent joined the post the petitioner was terminated. The petitioner having worked on stop-gap arrangement for some time is not entitled to be absorbed in the department. The petitioner is not entitled to any relief.

5. In the rejoinder filed, the petitioner has denied the contentions in the Counter Statement and has reiterated his case in the Claim Statement.

6. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W14 and Ext. M1 to Ext. M23.

7. The point for consideration are:

- (i) Whether the petitioner is entitled to be reinstated and regularized in the service of the Postal Department?
- (ii) If not, what if any is the relief to which he is entitled?

The Points

8. The petitioner has filed affidavit in lieu of Chief Examination asserting his case in the Claim Statement. He has stated that he has worked for more than 240 days under the Respondents and therefore he is entitled to be absorbed in service. He has claimed that initially he has worked as Gramin Dak Sevak and subsequently he has worked as Branch Post Master. According to him he is eligible to be absorbed in the Postal Department. However, he was terminated from service on 06.05.2011.

9. It is admitted by the Respondents in the Counter Statement itself that the petitioner was working as Gramin Dak Sevak and as Branch Post Master for some time. But according to the Respondents the engagement was only intermittently. When regular incumbent was recruited and has joined service the engagement of the petitioner was terminated.

10. Exts.W1 and Ext.W2 are the memos issued by the First Respondent with copy to the petitioner showing the engagement of the petitioner as EDDA for a particular period. Ext.W1 shows that the petitioner was working in the capacity of EDDA for the period from 12.10.1995 to 12.01.1996. Ext.W2 shows that the petitioner had worked as EDDA for a period of 60 days w.e.f. 02.09.1998. Ex.W3 is the certificate issued by a Branch Post Master stating that the petitioner had worked as GDSBPM at Kuchampatti Branch from 03.10.2000 to 03.01.2001. Ext.W4 is still another certificate showing that he worked from 11.10.2002 to 08.01.2003. Ex.W5 is a certificate showing his engagement for two months w.e.f. 19.10.2009. Ext.W7 shows that on 05.05.2011 the petitioner had handed over charge of Sempatti Branch Office to the newly appointed person. Ext.W8 is a report of surprise inspection by Assistant Superintendent of Aruppukkottai Sub-Division revealing that the petitioner was acting as Branch Post Master on 05.05.2011, the date of inspection. The Respondents have produced Ext.M2 showing the details of the period during which the petitioner had worked. As seen from this, the petitioner was engaged as Branch Post Master during the period from 19.10.2009 to 04.05.2011 on 20 different

occasions. However, the engagement was only intermittently, the maximum being 27 days and even for 3 days at the minimum. When the details given in Ext.M2 are compared with the documents produced by the petitioner and already referred to, it could be seen that this must be a correct account of the details of work done by the petitioner. Even though copy of the memo of engagement must have been issued to the petitioner also as seen from Ext.W1 and Ext.W2 issued while he was working as EDDA, such memos showing engagement as Branch Post Master are not produced by the petitioner. He has only produced certain certificates showing that the engagement was on stop-gap arrangement. However, the certificates, do not give the details of the date of engagement, date of termination, etc. It could be seen from Ext.M2 that the petitioner has not completed 240 days of work in any year even though he has worked for more than 240 days as Branch Post Master altogether from October 2009 to May 2011.

11. The engagement of the petitioner was only as an outsider. It was only intermittently he was working. On the last occasion he worked just for 3 days. The engagement prior to that was only for 22 days. Whenever engagement was made it was after specifying the period. So the petitioner was automatically to be terminated from the engagement by the end of the period for which he was engaged. Naturally, when a person is recruited as per the procedure the engagement of the petitioner came to an end. The very nature of the employment of the petitioner was as a substitute for the regular hand and that also only occasionally. So the claim of the petitioner to be reinstated and regularized in service is without any justification. The petitioner is not entitled to any relief.

12. In view of my discussion above, the reference is answered against the petitioner.

An award is passed accordingly.

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/ : WW1, Sri P. Ramachandran
Petitioner

For the 2nd Party/ : MW1, Sri A. Alagarsamy
Managements

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	31.01.1996	Memo of 1st Respondent
Ex.W2	01.09.1998	Memo of 1st Respondent
Ex.W3	13.01.2003	Certificate issued by Branch Postmaster, Kuchampatti B.O.
Ex.W4	13.01.2003	Certificate issued by Branch Postmaster, P. Thottiankulam B.O.

Ex.W5	16.10.2009	Order of 1st Respondent
Ex.W6	21.10.2009	Acknowledgement card received from Secretary, Salem Postal Employees Co-operative Society
Ex.W7	05.05.2011	Pay-Slip/Relieving Order
Ex.W8	05.05.2011	Inspection Report
Ex.W9	05.10.2011	Order of 1st Respondent
Ex.W10	08.12.2012	Claim Petition
Ex.W11	April 2013	Reply statement to the Claim Petition by the Respondents
Ex.W12	14.05.2013	Rejoinder by the petitioner to the reply filed by the Respondents to the Claim Petition
Ex.W13	19.02.2014	Order of the Government
Ex.W14	03.03.2014	Notice of this Hon'ble Tribunal

On the Managements side

Ex. No.	Date	Description
Ex.M1	21.10.2009	Sr. Supdt. Of Post Offices, Virudhunagar Division Memo No. B6/9/2009 - Selection of Sri P. Muniyandi, GDS BPM, Sempatti BO as Postman
Ex.M2	—	The period of Sri P. Ramachandran, outsider worked as GDS BPM, Sempatti BO under stop-gap arrangement
Ex.M3	—	Outsiders worked period as GDS BPM, Sempatti BO under stop-gap arrangement
Ex.M4	17.01.2011	Local notification issued by Sr. Supdt. Of Post Offices, Virudhunagar Division, Virudhunagar letter no. B5/139/ Sempatti BO for the selection of the post of GDS BPM, Sempatti BO
Ex.M5	17.01.2011	Sr. Supdt. Of Post Offices, Virudhunagar Division, Virudhunagar letter No. B5/139/Sempatti addressed to Employment Exchange, Virudhunagar for sponsoring the candidates - selection for the post of GDS BPM, Sempatti BO

Ex.M6	14.02.2011	Application of Selvi R. Ajitha, IIIupaiyur for the post of GDS BPM IIIupaiyur BO with enclosures	Ex.M14	20.04.1990	- 2 letter no. STC/13-11/2001 dated 02.11.2005 CAT, Chennai Judgment in OA No. 811/1988
Ex.M7	27.04.2011	Tabular statement for the appointment of GDS BPM, Sempatti BO	Ex.M15	19.11.2013	CAT, Chennai Judgment in OA No. 61 of 2012
Ex.M8	29.04.2011	Provisional appointment of GDS BPM Sempatti BO. vide SSP, Virudhunagar Memo No. B5/139/Sempatti	Ex.M16	15.12.2010	CAT, Chennai Judgment in OA No. 1197/09
Ex.M9	—	Delegation of powers for appointment of GDS BPM (Extract)	Ex.M17	22.11.2012	CAT Judgment in OA No. 220/20-11 and MA 374/2011
Ex.M10	—	Method of recruitment for the post of GDS BPM (Extract of Rules)	Ex.M18	30.06.2014	Ministry of Communication and IT Letter no. 66-50/2014 - SPB - 1 dated - Supreme Court Judgment in Civil Appeal No. 3595, 36/2/1999 for casual labourers
Ex.M11	—	Department of Posts, Gramin Dak Sevaks (Conduct and Engagement) Rules, 2011 with delegation of powers for selection to the post of GDS BPM (Extract).	Ex.M19	18.11.2011	Sri S. Venkatachalapathy, Acting GDS MD, Kallumadam BO Letter
Ex.M12	17.09.2003	Directorate letter no. 22-12/2001 - GDS dated- Selection of GDS on merit	Ex.M20	24.10.2011	RL Delivery Slip
Ex.M13	17.11.2005	Post Master General, Southern Region, Madurai - 2 letter no. STC/87-32/04 dated 17.11.2005 (Copy of Circle Office, Chennai	Ex.M21	18.11.2011	Sri S. Pandi, Slo Subburam, Kallumadam letter
			Ex.M22	18.11.2011	Sri S. Pandi, Slo Sakkarai Thevar, 2/238 Kallumadam letter
			Ex.M23	24.10.2011	Branch Office slip issued by Sub Post Master, M. Reddiapatty Post Office.